

THE
NEW CODE OF CIVIL PROCEDURE,

BEING
ACT XIV. OF 1882,

ANNOTATED WITH
RULINGS OF THE HIGH COURTS IN INDIA,

AND SUPPLEMENTED WITH
A COPIOUS INDEX.

BY
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PLEADER.

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PREFACE.

IN THIS edition of the new Code of Civil Procedure (Act XIV. of 1882), the various Rulings of the High Courts in India, taken principally from the Indian Law Reports, have been embodied in their proper places under each section.

To enhance the usefulness of the work, I have inserted notes indicating the sections which are applicable to the Mufassal Small Cause Courts and the Presidency Small Cause Courts; and I have supplemented the work with a copious index.

D. E. CRANENBURGH.

July 1, 1882.

THE NEW CODE OF CIVIL PROCEDURE.

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THE CODE OF CIVIL PROCEDURE.

ACT NO. XIV. OF 1882.

RECEIVED THE G.-G.'S ASSENT ON THE 10TH MARCH 1882.

An Act to consolidate and amend the laws relating to the Procedure of the Courts of Civil Judicature.

WHEREAS it is expedient to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature; It is hereby enacted as follows:—

Preamble.

PRELIMINARY.

Short title.
Commencement.

1. This Act may be cited as "The Code of Civil Procedure:" and it shall come into force on the first day of June, 1882.

This section and section 3 extend to the whole of British India. The other sections extend to the whole of British India except the Scheduled Districts as defined in Act No. XIV of 1874.

Local extent.

THE above section applies to M. S. C. C.

ON 28th September 1877 (*i.e.*, three days before Act X. of 1877 came into operation), an application was made for the enforcement of a money-decree by attachment (*inter alia*) of a political pension enjoyed by the defendants. Under Act VIII. of 1859, s. 216, a notice was issued on the same day to the defendants, calling upon them to show cause why the decree should not be executed. The defendants accordingly appeared on the day fixed (at which date Act X. of 1877 had come into force), and contended that, under s. 266, cl. g, of that Act, the pension was no longer attachable. *Held* that all proceedings, commenced and pending when Act X. of 1877 became law, were, under Act I. of 1868, s. 6, to be governed by the law theretofore in force, the general rule of construction contained in that section not being affected or varied by Act X. of 1877, ss. 1 and 3; and that a *bond fide* application for enforcement of a decree in a particular way, coupled with an order of the Court in furtherance of that object, as much constitutes a proceeding in execution commenced and pending as the actual issue of a warrant of attachment.—*Vidyárám v. Chandra Shekharrám*, I. L. R., 4 Bom. 163.

Interpretation-clause.

2. In this Act, unless there be something repugnant in the subject or context—

"chapter:"

"chapter" means a chapter of this Code:

"district" means the local limits of the jurisdiction of a principal

"district:"

Civil Court of original jurisdiction (hereinafter called a 'District Court'), and includes the local

"District Court:—"

limits of the ordinary original civil jurisdiction of a High Court: every Court of a grade inferior to that of a District Court, and every Court of Small Causes, shall, for the purposes of this Code, be deemed to be subordinate to the High Court and the District Court:

"pleader" means every person entitled to appear and plead for another in Court, and includes an advocate, a vakil, and an attorney of a High Court :

"Government Pleader" includes also any officer appointed by the Local Government to perform all or any of the functions expressly imposed by this Code on the Government Pleader :

"Collector :" "Collector" means every officer performing the duties of a Collector of land-revenue :

"decree" means the formal expression of an adjudication upon any right claimed, or defence set up, in a Civil Court, when such adjudication, so far as regards the Court expressing it, decides the suit or appeal. An order rejecting a plaint, or directing accounts to be taken, or determining any question mentioned or referred to in section 244, but not specified in section 588, is within this definition : an order specified in section 588 is not within this definition :

"order :" "order" means the formal expression of any decision of a Civil Court which is not a decree as above defined :

"judgment :" "judgment" means the statement given by the Judge of the grounds of a decree or order :

"judge :" "Judge" means the presiding officer of a Court :

"judgment-debtor :" "judgment-debtor" means any person against whom a decree or order has been made :

"decree-holder" means any person in whose favour a decree or any order capable of execution has been made, and includes any person to whom such decree or order is transferred :

"written :" "written" includes printed and lithographed, and "writing" includes print and lithography :

"signed" includes marked, when the person making the mark is unable to write his name ; it also includes stamped with the name of the person referred to :

"foreign Court" means a Court situate beyond the limits of British India, and not having authority in British India, nor established by the Governor-General in Council :

"foreign judgment" means the judgment of a foreign Court :

"public officer." "public officer" means a person falling under any of the following descriptions (namely):—

every Judge ;
every covenanted servant of Her Majesty ;
every commissioned officer in the military or naval forces of Her Majesty while serving under Government ;

every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties ;

every person who holds any office by virtue of which he is empowered to place or keep any person in confinement ;

every officer of Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety, or convenience ;

every officer whose duty it is, as such officer, to take, receive, keep, or expend any property on behalf of Government, or to make any survey, assessment, or contract on behalf of Government, or to execute any revenue-process, or to investigate, or to report on, any matter affecting the pecuniary interests of Government, or to make, authenticate, or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government, and every officer in the service or pay of Government, or remunerated by fees or commission for the performance of any public duty.

And in any part of British India in which this Code operates, "Government," "Government" includes the Government of India as well as the Local Government.

THE above section applies to M. S. C. C. and P. S. C. C.

AN order under s. 556 of Act X. of 1877, dismissing an appeal for the appellant's default, is not a "decree" within the meaning of s. 2, and is not appealable.—*Mukhi (Judgment-debtor) v. Fakir (Decree-holder)*, I. L. R., 3 All. 382.

THE term "judicial proceeding," as used in Act X. of 1877, s. 2, must be understood to mean a judicial proceeding of the same nature as a suit or such proceedings as are referred to in ss. 333, 522, 526, and 531. The definition given in Act X. of 1872 is not applicable.—*Dalpatbhai Bhagubhai v. Amarsang Khemâ Bhai*, I. L. R., 2 Bom. 553.

A DECREE of a Small Cause Court can be executed by it at any place within the local limits of the District Court to which it is subordinate, as defined by Act X. of 1877, s. 2, without having recourse to the procedure under s. 648, which applies only to cases in which a decree passed in one district has to be executed in another district.—*Badan Babajee v. Kala Chand Babajee*, I. L. R., 4 Cal. 823.

A COLLECTOR, when acting under s. 204 of Act XIX. of 1873 as the agent of the Court of Wards in respect of the estate of a disqualified person, is a public officer within the meaning of ss. 2 and 424 of Act X. of 1877, and consequently, when sued for acts done in that capacity, is entitled to the notice of suit required by the latter section.—*Collector of Bijnor, Manager of the Estate of Chaudhri Ranjit Singh, a Minor (Defendant), v. Munuvar (Plaintiff)*, I. L. R., 3 All. 20.

A DECREE-HOLDER, within the meaning of the Civil Procedure Code, is the person whose name appears on the record as the person in whose favour the decree was made, or some person whom the Court has, by order, recognized as the decree-holder from the original plaintiff or his representatives. S. 235 of the Civil Procedure Code puts on the party applying for execution the obligation of stating any adjustment between the parties after decree ; that is, any matter not done through the Court as well as any agreement through the Court.—*Paupayya v. Narasimiah*, I. L. R., 2 Mad. 216.

THE effect of the proviso to s. 3 of Act X. of 1877 (taken in connection with the definition of the word "decree" in s. 2) is that, in all suits pending when that Act came into force, the practice and procedure to be followed down to the final result

of such suits (*i.e.*, when nothing remains to be done but to execute the decree or to appeal from it) are the same as previously existed, but that, in all subsequent proceedings in execution of the decree or in appeal from it, the practice and procedure provided by Act X. of 1877 are to be observed.—*Rustomji Burjorji v. Kessowji Naik*, I. L. R., 3 Bom. 161.

AN APPELLATE COURT rejected the application of the legal representative of a deceased sole plaintiff-appellant to enter his name in the place of such appellant on the record, on the ground that such application had not been made within the time limited by law, and passed an order that the suit should abate. *Held* that the order of the Appellate Court, passed under the first paragraph of s. 366 of Act X. of 1877, not being appealable under cl. 18, s. 588, of that Act, nor being a decree within the terms of s. 2, from which a second appeal would lie, was not appealable.—*Ahmad Ata (Plaintiff) v. Mata Badal Lal (Defendant)*, I. L. R., 3 All. 844.

By a decree in an administration-suit, A was appointed Receiver "to manage the estate." A died, and by a subsequent order B was appointed Receiver. One of the defendants in the suit applied to have B removed from the office of Receiver on the ground of his alleged mismanagement of the estate. The application was refused. *Held* that the order of refusal was appealable, whether the former Code or the present Code of Civil Procedure was deemed to be applicable, being an order made in respect of a question arising between the parties to a suit relating to the execution of the decree.—*Mithibai (Plaintiff) v. Limji Nowroji Banaji and others (Defendants)*; *Harriyallubhdas Calliandás (Original Defendant), Appellant, v. Ardasar Framji Moos (Receiver and Respondent)*, I. L. R., 5 Bom. 45.

THE sharers of a joint undivided estate agreed in writing that such estate should be partitioned and the accounts thereof settled by arbitration, and named one of such sharers as arbitrator, and agreed that he should settle all the accounts, show the surplus at each sharer's credit, and prepare lots, after partition of the lands and houses comprehended in such estate, and have them drawn within one year from the completion of the partition. Subsequently, one of such sharers applied, under s. 523 of Act X. of 1877, to have such agreement filed in Court. The other sharers not objecting to this course, such agreement was filed accordingly, and the case was referred to such arbitrator. The arbitrator made an award, whereby he partitioned such estate into lots, assigning some only of such lots by name, and wherein he stated that he had not been able to settle the accounts owing to the default of the parties, and that, considering that the partition should take effect without any delay, he did not ask for further time. He further stated that "all the parties state that they will adjust the accounts after renewing the agreement," and that he requested that the unassigned lots might be drawn in Court. The Court made an order confirming the award, and, it being objected that the settlement of the accounts should not be postponed, but that they should be settled as agreed, directed that the arbitrator should settle the accounts, and gave him a year's time for that purpose, and some of the parties, not being willing to draw the unassigned lots, directed the distribution of such lots "in reference to the age and number" of the sharers. *Held* that such order was a "decree" within the meaning of ss. 2 and 522 of Act X. of 1877: that the arbitrator should himself have drawn such lots, or he should have made the parties draw them; but, inasmuch as it would not have strained the agreement to have had such lots drawn in Court, and no objection had been taken to the arbitrator not having himself drawn them, it was not incumbent on the Court to have remitted the award in order that the arbitrator might have drawn them: that the Court, however, should not have distributed such lots in the manner it had done, but should have drawn a lot for each person, and in acting as it had done it had acted contrary to the award, and for that reason its decree could not be maintained: and that, in confirming the award before the accounts had been settled, and an award made in respect thereof, the Court had acted erroneously, inasmuch as the award had left undetermined a very important matter, *viz.*, the settlement of the accounts, and the Court should, under s. 520 of Act X. of 1877, have remitted the award for the reconsideration of the arbitrator, and as it had power to remit it upon such terms as it thought fit, the Court could have allowed one year, if necessary, for the settlement of the accounts; and on this account, and also because the Court had made an order postponing the settlement of the accounts, and thereby made an order contrary to and in excess of the award, its decree must be reversed.—*Sadik Ali Khan (Plaintiff) v. Imdad Ali Khan and others (Defendants)*, I. L. R., 3 All. 286.

3. The enactments specified in the first schedule hereto annexed are hereby repealed to the extent mentioned

Enactments repealed. in the third column thereof. But all notifications published, declarations and rules made, places appointed, agreements filed, scales prescribed, and forms framed under any such enactment, shall, so far as they are consistent with this Code, be deemed to be respectively published, made, appointed, filed, prescribed, and framed hereunder.

And when, in any Act, Regulation, or notification passed or issued prior to the day on which this Code comes into force, reference is made to Act No. VIII. of 1859, Act No. XXIII. of 1861, or the 'Code of Civil Procedure,' or to Act No. X. of 1877, or to any other Act hereby repealed, such reference shall, so far as may be practicable, be read as applying to this Code or the corresponding part thereof.

Save as provided by section 99A, nothing herein contained shall affect any proceedings prior to decree in any suits instituted before 1st suit instituted or appeal presented before the first day of June, 1882, or any proceedings after decree that may have been commenced and were still pending at that date.

Every appeal pending on the twenty-ninth day of July, 1879, which would have lain if this Code had been in force on the date of its presentation, shall be heard and determined as if this Code had been in force on such date; and every order passed before the same day, purporting to transfer a case to a Collector under section 320, and every notification published before the same day, purporting to be issued under section 360, shall be deemed to have been respectively passed and issued in accordance with law.

THE above section applies to M. S. C. C.

THE effect of Act I. of 1868, s. 6, and Act X. of 1877, s. 3, taken together, is that the chapter of the new Code of Civil Procedure which deals with execution of decree is prospective, and does not affect proceedings already commenced.—In the matter of the petition of Ratansi Kaliánji and six others, I. L. R., 2 Bom. 148 (F.B.). See also I. L. R., 3 Cal. 662 (F.B.); also I. L. R., 4 Cal. 825. But see I. L. R., 2 All. 74.

THE word "decree" in Act X. of 1877, s. 3, means an order final in its nature, and does not include an interlocutory order, such as an order of reference to take accounts, although such order may, in general, be properly termed a "decree;" and therefore a suit which has been referred by the Court to the Commissioner to take accounts is still in a stage "prior to decree" within the meaning of s. 3.—*Rustomji Burjorji v. Kessowji Naik*, I. L. R., 3 Bom. 161.

THE effect of the proviso to s. 3 of Act X. of 1877 (taken in connection with the definition of the word "decree" in s. 2) is that, in all suits pending when that Act came into force, the practice and procedure to be followed down to the final result of such suits (i.e., when nothing remains to be done but to execute the decree or to appeal from it) are the same as previously existed, but that, in all subsequent proceedings in execution of the decree or in appeal from it, the practice and procedure provided by Act X. of 1877 are to be observed.—*Rustomji Burjorji v. Kessowji Naik*, I. L. R., 3 Bom. 161.

WHERE a suit has been instituted under Act VIII. of 1859, but decided at a time when Act X. of 1877 had come into operation, and an appeal is presented against such decision, s. 3 of the latter Act distinctly indicates that such an appeal is to be

governed by the law of procedure in force at the date of the presentation of the appeal. Where, therefore, an appeal, presented when Act X. of 1877 was in force, has been dismissed under s. 556 of that Act, the appellant may apply for its re-admission under s. 558; and if such re-admission is refused, he is entitled to an appeal under s. 558.—*Elahi Buksh v. Marachow*, I. L. R., 4 Cal. 825.

ON 28th September 1877 (*i.e.*, three days before Act X. of 1877 came into operation), an application was made for the enforcement of a money-decree by attachment (*inter alia*) of a political pension enjoyed by the defendants. Under Act VIII. of 1859, s. 216, a notice was issued on the same day to the defendants, calling upon them to show cause why the decree should not be executed. The defendants accordingly appeared on the day fixed (at which date Act X. of 1877 had come into force), and contended that, under s. 266, cl. g, of that Act, the pension was no longer attachable. Held that all proceedings, commenced and pending when Act X. of 1877 became law, were, under Act I. of 1868, s. 6, to be governed by the law theretofore in force, the general rule of construction contained in that section not being affected or varied by Act X. of 1877, ss. 1 and 3; and that a *bond fide* application for enforcement of a decree in a particular way, coupled with an order of the Court in furtherance of that object, as much constitutes a proceeding in execution commenced and pending as the actual issue of a warrant of attachment.—*Vidyaram v. Chandra Shukharram*, I. L. R., 4 Bom. 163.

IN ALL suits instituted before Act X. of 1877 came into force, in which an appeal lay to the High Court under Act VIII. of 1859, an appeal still lies, notwithstanding the repeal of that Act by Act X. of 1877. *Per* Garth, C.J.—A suit is a “judicial proceeding,” and the words “any proceeding” in Act I. of 1868, s. 6, include all proceedings in any suit from the date of its institution to its final disposal, and therefore include proceedings in appeal. The word “procedure” in Act X. of 1877, s. 3, has not the same meaning as the word “proceedings” in the above-mentioned section. The proceedings in a suit instituted before Act X. of 1877 came into force, including a special appeal if the old Code allowed one, go on to the end of the suit, notwithstanding the repeal of the old Code. The “procedure” (*i.e.*, the machinery by which those proceedings are conducted) is, after decree, to be that provided by the new Code. *Per* Jackson, J.—The word “decree,” as defined in Act X. of 1877, does not include “orders,” either original or appellate, upon matters arising in the course of a suit or in execution of a decree. The power of the High Court to hear appeals from the Civil Courts in the interior is regulated by Act VI. of 1871. Act I. of 1868, s. 6, covers proceedings taken in execution of decree which have been commenced before Act X. of 1877 came into force. *Per* Markby, Mitter, and Ainslie, J.J.—Cl. 16 of the Letters Patent of 1865 empowers the High Court to hear appeals in all cases in which an appeal lay under Act VIII. of 1859.—*Runjit Sing v. Maherban Koer*, I. L. R., 3 Cal. 662 (F.B.). See also I. L. R., 2 Bom. 148 (F.B.); I. L. R., 1 All. 668 (F.B.); I. L. R., 4 Cal. 825.

Saving of certain Acts affecting Central Provinces, Burma, Panjáb, and Oudh.

4. Save as provided in the second paragraph of section 3, nothing herein contained shall be deemed to affect the following enactments (namely):—

The Central Provinces Courts Act, 1865 :

The Burma Courts Act, 1875 :

The Panjáb Courts Act, 1877 :

The Oudh Civil Courts Act, 1879 :

or any law heretofore or hereafter passed under the Indian Councils Act, 1861, by a Governor or a Lieutenant-Governor in Council, prescribing a special procedure for suits between landholders and their tenants or agents,

or any law heretofore or hereafter passed under the Indian Councils Act, 1861, by a Governor or a Lieutenant-Governor in Council, providing for the partition of immoveable property.

And where, under any of the said Acts, concurrent civil jurisdiction is given to the Commissioner and the Deputy Commissioner, the Local Government may declare which of such officers shall, for the purposes of this Code, be deemed to be the District Court.

5. The chapters and sections of this Code specified in the second schedule hereto annexed extend (so far as they are applicable) to Courts of Small Causes constituted under Act No. XI. of 1865, and to all other Courts (other than the Courts of Small Causes in the towns of Calcutta, Madras, and Bombay) exercising the jurisdiction of a Court of Small Causes. The other chapters and sections of this Code do not extend to such Courts.

THE above section applies to M. S. C. C.

THE effect of Act X. of 1877, s. 5, coupled with sch. 2, is to render the whole of Chap. XX. (relating to insolvent debtors) inapplicable to a Mufassal Small Cause Court, notwithstanding the words "any Court other than a District Court" and any Court situate within his district which occur in that section. Consequently the Government Resolution of 3rd April 1878, investing the Judge of the Small Cause Court at Ahmedabad with powers, under the said chapter, to adjudicate in insolvency matters, is *ultra vires* and invalid.—*Lallu Ganesh v. Ranchhod Kahandas*, I. L. R., 2 Bom. 641.

Saving of jurisdiction and procedure—

(a) of Military Courts of Request;

(b) of officers appointed to try small suits in Bombay;

(c) of Village Munsifs and Village Panchayats in Madras;

(d) of Recorder of Rangoon sitting as Insolvent Court.

6. Nothing in this Code affects the jurisdiction or procedure—

(a) of Military Courts of Request;

(b) of a single officer duly appointed in the Presidency of Bombay to try small suits in military bazaris at cantonments and stations occupied by the troops of that Presidency; or

(c) of Village Munsifs or Village Panchayats under the provisions of the Madras Code;

(d) of the Recorder of Rangoon sitting as an Insolvent Court in Rangoon, Maulmain, Akyab, or Bassein:

or shall operate to give any Court jurisdiction over suits of which the amount or value of the subject-matter exceeds the pecuniary limits (if any) of its ordinary jurisdiction.

THE Deputy Commissioner of Akyab, sitting as District Judge, has power to entertain applications under Act X. of 1877, Chap. XX. S. 6 (d) of that Act interposes no obstacle in the way of his dealing with such applications, nor does the exercise of such power in any way "affect the jurisdiction of the Recorder of Rangoon" sitting as an Insolvent Court in Akyab within the meaning of that section.—*In re Abdool Hamed*, I. L. R., 4 Cal. 94.

7. With respect to

(a) the jurisdiction exercised by certain jagirdars and other authorities invested with powers under the provisions of Bombay Regulation XIII. of 1830 and Act XV. of 1840 in the cases therein mentioned; and

(b) cases of the nature defined in the enactments specified in the third schedule hereto annexed,

the procedure in such cases, and in the appeals to the Civil Courts allowed therein, shall be according to the rules laid down in this Code, except where those rules are inconsistent with any specific provisions contained in the enactments mentioned or referred to in this section.

8. Save as provided in sections 3, 25, 86, 223, 225, 386, and Chapter XXXIX., this Code shall not extend to any Presidency Small Cause Courts. suit or proceeding in any Court of Small Causes established in the towns of Calcutta, Madras, and Bombay.

But the Local Government may, by notification published in the official Gazette, extend to any such Court this Code, or any part thereof, except so far as relates to appeals and reviews of judgment.

9. This Code is divided into ten Parts as follows:—

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|-------------------|--|
| Division of Code. | |
| The first Part: | Suits in General. |
| The second Part: | Incidental Proceedings. |
| The third Part: | Suits in particular Cases. |
| The fourth Part: | Provisional Remedies. |
| The fifth Part: | Special Proceedings. |
| The sixth Part: | Appeals. |
| The seventh Part: | Réference to and Revision by the High Court. |
| The eighth Part: | Review of Judgment. |
| The ninth Part: | Special Rules relating to the Chartered High Courts. |
| The tenth Part: | Certain Miscellaneous Matters. |

PART I. OF SUITS IN GENERAL.

CHAPTER I.

OF THE JURISDICTION OF THE COURTS AND RES JUDICATA.

No person exempt from jurisdiction by reason of descent or place of birth.

10. No person shall, by reason of his descent or place of birth, be, in any civil proceeding, exempted from the jurisdiction of any of the Courts.

THE above section applies to M. S. C. C. and P. S. C. C.

11. The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature, excepting suits of which their cognizance is barred by any enactment for the time being in force.

Explanation.—A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Suits as to religious rites or ceremonies, which involve no question of the right to property or to an office, are not suits of a civil nature, nor are they intended to be brought within the jurisdiction of the Civil Courts. A suit, therefore, by the plaintiffs, as members of a committee of management of a Hindu temple, to compel the hereditary priests of the temple to take out certain ornaments from the treasury of the managing committee, and to obtain a declaration that the said ornaments, after they had been so taken out of the treasury, were in the custody of the priests, and that they were responsible for their safe custody, was held unsustainable. S. 11 of the Civil Procedure Code, Act X. of 1877, introduces no new law, but merely declares the law as it has always been administered.—*Vasudev and another (Original Defendants), Appellants, v. Vamnaji and others (Original Plaintiffs), Respondents*, I. L. R., 5 Bom. 80.

12. Except where a suit has been stayed under section 20, the Court shall not try any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit for the same relief between the same parties, or between parties under whom they or any of them claim, pending in the same or any other Court, whether superior or inferior, in British India having jurisdiction to grant such relief, or in any Court beyond the limits of British India established by the Governor-General in Council and having like jurisdiction, or before Her Majesty in Council.

Explanation.—The pendency of a suit in a foreign Court does not preclude the Courts in British India from trying a suit founded on the same cause of action.

THE above section applies to M. S. C. C. and P. S. C. C.

THE judgment of a foreign Court, obtained on a decree of a Court in British India, is no bar to the execution of the original decree.—*Fakuruddeen Mahomed Assau v. The Official Trustee of Bengal*, I. L. R., 7 Cal. 82.

13. No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court of jurisdiction competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.—The matter above referred to must, in the former suit, have been alleged by one party, and either denied or admitted, expressly or impliedly, by the other.

Explanation II.—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation III.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purpose of this section, be deemed to have been refused.

Explanation IV.—A decision is final within the meaning of this section when it is such as the Court making it could not alter (except on review) on the application of either party or re-consider of its own motion. A decision liable to appeal may be final within the meaning of this section until the appeal is made.

Explanation V.—Where persons litigate *bond fide* in respect of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purpose of this section, be deemed to claim under the persons so litigating.

Explanation VI.—Where a foreign judgment is relied on, the production of the judgment duly authenticated is presumptive evidence that the Court which made it had competent jurisdiction, unless the contrary appear on the record; but such presumption may be removed by proving the want of jurisdiction.

THE above section applies to M. S. C. C. and P. S. C. C.

AN ORDER refusing an application to execute a decree is not an adjudication within the rule of *res judicata*.—Hurresoondary Dasse v. Jaggobundhoo Dutt, I. L. R., 6 Cal. 203.

UNDER Act X. of 1877, s. 13, the law is now the same as it was under Act VIII. of 1859 prior to the passing of Act I. of 1872.—Náranji Bhikhabhai v. Dipá Umed, I. L. R., 3 Bom. 3.

ACT X. of 1877, s. 13, expl. 5, only applies to cases where several different persons claim an easement or other right under one common title, *e.g.* where the inhabitants of a village claim by custom a right of pasturage over the same tract of land or to take water from the same spring or well.—Kalishunkur Doss v. Gopal Chunder Dutt, I. L. R., 6 Cal. 49.

THIS section does not require a plaintiff at once to assert all his titles to property, or to be thereafter estopped from advancing them. The maxim, *Nemo bis vexari debet in eadem causâ*, cannot apply where the right on which the second suit is brought is not the same as that asserted in the former suit.—Sadaya Pillai v. Chinni, I. L. R., 2 Mad. 352.

AN APPLICATION by petition under Act II. of 1874, s. 63, is a suit within the meaning of Act X. of 1877, s. 13, and therefore is barred by the disposal of a former application in the same matter under the same section or under Act XXIV. of 1867, s. 60, which the Act of 1874 repeals; this is so whether the order is one for payment of money or one dismissing the petition.—Eliza Smith v. The Secretary of State, I. L. R., 3 Cal. 340.

ACCORDING to the rule of *res judicata* in England, in order to make an adjudication in one suit a bar to the plaintiff's proceeding in another, it must be shown, 1st, that the parties in both suits are the same; 2nd, that the thing sought to be recovered is the same; 3rd, that the grounds upon which the claim is founded are the same; and, 4th, that the character in which the parties sue, or are sued, is the same.—*Per* Garth, C.J., Denobundoo Chowdry v. Kristomonee Dossee, I. L. R., 2 Cal. 152.

EXPLANATION 5 to s. 13 of the Code of Civil Procedure would not make a judgment obtained in a suit against one co-sharer binding on another co-sharer no party to such suit, in respect of the rights enjoyed in common by such co-sharers in their common property. Nor could such explanation be applied to a case instituted, or the judgment delivered in such case, during the time when the old Code of Civil Procedure was in force.—Hazir Gazi v. Sonamonee Dasse, I. L. R., 6 Cal. 31.

NOR only may the plea of *res judicata*, though not taken in the memorandum of appeal, be entertained in second appeal, under the provisions of s. 542 of Act X. of 1877, but even when such plea has not been urged in either of the lower Courts, or in the memorandum of appeal, if raised in the second appeal, it must be considered and determined either upon the record as it stands, or after a remand for finding of fact.—Muhammad Ismail (Plaintiff) v. Chattar Singh and another (Defendant), I. L. R., 4 All. 69.

WHEN the judgment of a Court of first instance upon a particular issue is appealed against, that judgment ceases to be *res judicata*, and becomes *res sub-judice*; and if the Appellate Court declines to decide that issue, and disposes of the case on other grounds, the judgment of the first Court upon that issue is no more a bar to a future suit, than it would be if that judgment had been reversed by the Court of

appeal.—Nilvaru (Original Plaintiff), Appellant, v. Nilvaru and others (Original Defendants). Respondents, 1. L. R., 6 Bom. 110.

Held by the Full Bench that the law of *res judicata* does not apply in proceedings in execution of a decree. *Held*, therefore, by the referring Bench, where on an application for the execution of a decree the question was raised whether the decree awarded mesne-profits or not, and the Court executing it determined that it did not award mesne-profits, that such determination was not final, but such question was open to re-adjudication on a subsequent application for execution of the decree.—Rup Kuari (Judgment-debtor) v. Ram Kirpal Shukul (Decree-holder), 1. L. R., 3 All. 141 (F.B.).

IN a suit by raiyats against their zamindár, praying for measurement of certain land, and for a declaration of the amount of yearly rental, it appeared that, in a previous suit for rent by the zamindár against the raiyats, the raiyats had alleged that the amount of rent and the extent of land had been over-stated by the zamindár, but the Court decided that the raiyats were bound by a jamabandi signed by them, and refused to try whether the extent had been over-stated. *Held* that the present suit was not barred as *res judicata*.—Roghoo Nath Mundul v. Juggut Bundhoo Bose, 1. L. R., 7 Cal. 214.

THE plaintiff sued to recover certain lands, claiming them as a portion of A, and alleging that A was portion of a mouza which had been leased to him in patni by the zamindár. The suit was dismissed, on the ground that though A was known as a part of the plaintiff's mouza, yet it had been included in a patni lease of an adjoining mouza, which the zamindárs had granted to the defendants previously to the date of the plaintiff's lease. The plaintiff brought a second suit claiming another portion of A on the same title. *Held* that the claim was barred as *res judicata*.—Sundhya Mala v. Dabi Churn Dutt, 1. L. R., 6 Cal. 715.

PLAINTIFF sued for a declaration of *mourosee mokurruee* rights to certain lands and for mesne-profits, alleging that he had been wrongfully ejected by the predecessors in title of the defendants. A previous suit on the same cause of action was heard and dismissed on the ground of limitation: *Held* that the present suit was not barred as *res judicata* under Act VIII. of 1859, s. 2 (corresponding with Act X. of 1877, s. 13), inasmuch as the first suit having been brought after the period allowed by law, the Court in which it was instituted was not competent to hear and determine it.—Brindabun Chunder Sirkar v. Dhununjoy Nushkur, 1. L. R., 5 Cal. 246.

MATTER in issue may be defined as matter from which, either by itself or in connection with other matter, the existence, non-existence, nature, or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows (s. 3, Ev. Act); and the first and second explanations shew that matter will be considered to have been directly and substantially in issue, if it is matter in issue which might and ought to have been put forward by either plaintiff or defendant in the previous suit. If the plaintiff might have made the same claim in the prior action, but did not, the subsequent suit will be barred.—Denobundoo Chowdry v. Kristomonee Dossee, 1. L. R., 2 Cal. 152.

THE question whether the parties to a suit in a Court of Revenue for arrears of rent stand in the relation of landlord and tenant is one which it is necessary for such Court to try incidentally for the purpose of disposing of such suit, but not one which such Court has special jurisdiction to determine, and its determination of that question is not that of a competent Court. Consequently, where a Court of Revenue determines, in such a suit, that the parties do not stand in such relation, such determination does not bar the party alleging that the parties do stand in such relation from suing in the Civil Court to establish such relation.—Gopal (Plaintiff) v. Uchabal and others (Defendants), 1. L. R., 3 All. 51.

A DECREE against a Karnavan of a Malabar tarwad, as such, is binding upon the members of that tarwad, though not parties to the suit, in the absence of fraud or collusion. A Karnavan is not a mere trustee, nor do the rules of Courts of Equity as to the necessity of making *cestui que trusts* parties to suits against trustees by strangers apply to the case of a Karnavan and the members of the tarwad. Explanation 5 of s. 13, Civil Procedure Code, is not limited to the case of a suit under s. 30. The members of a tarwad claim under a Karnavan, suing as such, within the meaning of Explanation 5 of s. 13. Status of Karnavan discussed.—Varanakot Narayanan Namburi v. Varanakot Narayanan Namburi, 1. L. R., 2 Mad. 328.

ACT X. of 1877, s. 13, expl. 2, was meant to apply to a case where the defendant has a defence which, if he had so pleased, he might, and ought to, have brought forward ; but, as he did not bring it forward, the suit has been decreed against him. Under such circumstances the defendant is as much bound by the adverse decree as if he had set up the defence, and he is equally estopped from setting up that defence in any future suit under similar circumstances. The explanation was never intended to enable a party to treat a point of law as having been decided in his favour in a former suit, which was in fact not so decided, and which it was not necessary, for the purposes of the suit, to decide at all.—*Ghursobhit Ahir v. Ramdutt Singh*, 1. L. R., 5 Cal. 923.

I, to whom the obligee of a bond for the payment of money in which immoveable property was hypothecated had assigned by sale her right thereunder, sued, by virtue of the deed of sale on such bond, for the money due thereunder, claiming to recover by the sale of the hypothecated property. The suit was dismissed on the ground that the deed of sale, not being registered, could not be received in evidence, and consequently I's right to sue on such bond failed. I, having procured the execution of a fresh deed of sale, and caused it to be registered, brought a second suit on such bond by virtue of such deed of sale, claiming as before. *Held* that the second suit was not barred by the provisions of s. 13 of Act X. of 1877.—*Ishri Dat (Plaintiff) v. Har Narain Lal and others (Defendants)*, 1. L. R., 3 All. 334.

IN A suit to recover possession of certain land, where it appeared that there had been a previous suit between the same parties with respect to the same land, in which the then plaintiff sought to have their possession confirmed, and that in that suit the lower Courts had decided the case both on the question of title and possession, but on special appeal the High Court had dealt only with the question of possession, and in dismissing the appeal had not gone into the question of title, and the defendant in that suit subsequently sued to recover possession of the land. *Held* that the question of title was still open between the parties, and had not been heard and finally decided by a Court of competent jurisdiction in a former suit within the meaning of s. 13 of Act X. of 1877 (Civil Procedure Code).—*Gungabishen Bhugut v. Roghoonath Ojha*, 1. L. R., 7 Cal. 381.

IN ORDER to see whether a question is *res judicata* within the meaning of s. 13, Civil Procedure Code, the former decree and the questions decided thereby must alone be considered. The words in s. 13, "has been heard and finally decided by such Court," do not apply to an opinion expressed in the judgment on other issues not material for the purpose of the decree, though properly determined under s. 204 by the Court of first instance. *Niamut Khan v. Phadu Buldia* (1. L. R., 6 Cal. 319) and *Lachman Sing v. Mohan* (1. L. R., 2 All. 497) dissented from. Where a plaintiff improperly brings a defendant before a Court, and this suit is dismissed, the defendant should not be deprived of costs merely because the Court considers the defence a fabrication to meet the plaintiff's claim.—*Devarakonda Narasama (First Defendant), Appellant, and Devarakonda Kanaya (Plaintiff), Respondent*, 1. L. R., 4 Mad. 134.

WHERE the plaintiff in a suit prays that a person may be substituted on the record as the heir of a defendant who has died, the Judge should raise an issue as to whether the person sought to be substituted is the heir of the deceased defendant. In 1872, A brought a suit on a mortgage against the mortgagor, a Hindu widow who died pending the suit. A then applied that the suit should be revived against B as the representative of the defendant. B denied that he was such representative, but the Judge refused to go into the question, made B a party, and gave A a decree for the sale of the mortgaged property. B subsequently brought a suit to have it declared, *inter alia*, that the mortgage and decree only covered the widow's life-interest. *Held* that the suit was not barred either as *res judicata*, or under the provisions of s. 244 of the Code of Civil Procedure.—*Kanai Lall Khan v. Sashi Bhuson Biswas*, 1. L. R., 6 Cal. 777.

S AND B jointly sued N for the redemption of a mortgage of an eight-anna share of a village, B suing as the purchaser from the mortgagor of a moiety of such share. N did not, in defence of such suit, assert a right of pre-emption in respect of such moiety, although such right had accrued to him on its sale by the mortgagor to B. S and B obtained a decree in such suit, and the mortgage was redeemed. N subsequently sued B and his vendor to enforce his right of pre-emption in respect of

such moiety. *Held* that it was incumbent upon N in the former suit to have asserted in defence his right of pre-emption in respect of such moiety, inasmuch as if that right had been established, it must, so far as B was concerned, have proved fatal to his title to redeem, and that, as he had not done so, the suit enforce his right of pre-emption was barred by the provisions of s. 13 of Act X. of 1877, Explanation II.—*Narain Dat (Plaintiff) v. Bhairu Bukhsipal and other (Defendants)*, I. L. R., 3 All. 189.

A DECREE obtained *ex parte* is not final within the meaning of expl. 4, s. 13 of Act X. of 1877. Such a decree is not conclusive evidence of the amount of rent payable by the same defendant in another suit for subsequent rent of the same property. Where the plaintiff sued the defendant for a year's rent at the same rate which had been decreed to him for a previous year in a suit which he had brought against the same defendant for rent of the same property, and relied upon the former decree, which had been obtained *ex parte*, and which he also alleged had been duly executed, as evidence of the amount of rent due to him by the defendant, but it appeared that the lower Court had found that the alleged execution-proceedings were fraudulent, and that no steps had been taken which gave finality to the decree. *Held* that the decree was not conclusive evidence of the amount of rent due from the defendant, or of the questions with which it dealt.—*Nilmoney Singh v. Heera Lal Dass*, I. L. R., 7 Cal. 23.

THE obligee of a bond payable by instalments sued the obligor for four instalments, claiming with reference to the terms of such bond interest on such instalments from the date of such bond. The obligor contended in that suit that, on the proper construction of the bond, the interest on such instalments should be calculated from the dates of default. The obligee obtained a decree for interest as claimed. The obligee subsequently again sued the obligor for four instalments, again claiming interest on such instalments from the date of such bond. The obligee contended again in the second suit that interest should only be calculated from the dates of default. *Held* that the question as to the date from which interest due on the defaulting instalments was exigible under the terms of such bond was *res judicata*. It is the "matter in issue," not the "subject-matter" of the suit, that forms the essential test of *res judicata* in s. 13 of Act X. of 1877.—*Phalwan Singh (Plaintiff) v. Risal Singh and another (Defendants)*, I. L. R., 4 All. 55.

A HINDU sued for compensation for the loss of his daughter's services in consequence of her abduction by the defendant, and for the costs incurred by him in prosecuting the defendant criminally for such abduction. The defendant was convicted on such prosecution: *Held* that the decision of the Criminal Court did not operate under s. 13 of Act X. of 1877 to bar the determination in such suit of the question whether the defendant had or had not abducted the plaintiff's daughter. Also that the plaintiff was entitled to recover the costs of such criminal proceedings. The daughter in this case was a married woman, who had been deserted by her husband, and at the time of her abduction was living with the plaintiff her father. *Held* by Stuart, C.J.—That the suit by the father for compensation for the loss of his daughter's services in consequence of her abduction was, under the circumstances, maintainable. *Held* by Oldfield, J.—That a suit by a Hindu father for the loss of his daughter's services in consequence of her abduction is not maintainable.—*Ram Lal (Defendant) v. Tula Ram (Plaintiff)*, I. L. R., 4 All. 97.

G SOLD an estate nominally to the minor son of K, but in reality to K. K brought a suit in his minor son's name against N, the mortgagee of such estate, to redeem the same. N set up as a defence to such suit that such sale was invalid under Hindu law, as such estate was a share of certain undivided property of which he was co-sharer, and had been made without his consent. It was finally decided in that suit that such estate was a share of such undivided property and not the separate property of G, and that such sale was invalid, having been made without the consent of N, a co-sharer of such undivided property. G subsequently redeemed such estate, and, having done so, sold it a second time to K. N thereupon sued K to set aside such sale on the same ground as that on which he had defended the former suit. *Held* that the issue in such suit whether such estate was a share of undivided property or the separate property of G was *res judicata*, inasmuch as K, though not in name, yet in fact, was a "party" to the former suit in which such issue was raised and finally decided.—*Khut Chand (Defendant) v. Narain Singh (Plaintiff)*, I. L. R., 3 All. 812.

EXPLANATION 5 of s. 13 of Act X. of 1877 only applies to cases where several different persons claim an easement or other right under one common title, as, for instance, where the inhabitants of a village claim by custom a right of pasturage over the same tract of land or to take water from the same spring or well. Where therefore A, in defending a suit brought against him by B, to have it declared that he had a right to build a wall across a drain, set up a prescriptive right to use the drain, and it was decided that no such prescriptive right existed in A; and, subsequently, C brought a suit against B, claiming to use the same drain as an easement, and asking for the removal of the wall in question in the former suit, and B set up the judgment in the suit between himself and A, as a bar to the suit. *Held* that the right claimed by C not being one which he and other inhabitants of the neighbourhood claimed under one common title, but a prescriptive right which he claimed individually in respect of his own house and premises, and depending upon the length of time he had used the right, was a separate claim, and that the judgment in the suit between B and A did not operate as a bar to his suit.—*Kalishunkar Doss v. Gopal Chunder Dutt*, I. L. R., 6 Cal. 49.

CERTAIN immoveable property was attached in execution of a money-decree held by A, dated 22nd August 1871. On 1st April 1872, the same property was subsequently attached in execution of a decree held by B, dated 19th August 1871, which directed the sale of the property in satisfaction of a charge declared thereby. The property was sold in execution of the decree. The Munsif directed that the proceeds of the sale should be paid to B. A, who claimed them on the ground that he had first attached the property, appealed against this order. The Judge, declaring that A was entitled to the proceeds, reversed the Munsif's order. A then obtained an order from the Munsif, directing B to refund the money, which he did, and it was paid to A. B sued A to recover the money by establishment of his prior right to the same, and for the cancellation of the Judge's order, alleging that the same was made without jurisdiction: *Held* (by a majority of the Full Bench) that the suit was one for money received by the defendant for the plaintiff's use, and was therefore governed by sch. 2, art. 60. *Held* (by the Division Bench) that A was not entitled, as the first attaching creditor, to the sale proceeds.—I. L. R., 1 All. 333 (F.B.). See also *Bhawani Kuar v. Rikhi Ram*, I. L. R., 2 All. 354.

N BROUGHT a suit against P for enhancement of rent. P's defence was, *first*, that no notice of enhancement had been given; *secondly*, that the rent was not enhanceable, as he and his predecessors in title had held it at a fixed rent from the date of the Permanent Settlement. The suit was dismissed on the ground that no notice had been given; but the Munsif stated in his judgment that he considered the rent enhanceable, because he did not believe in the genuineness of the documentary evidence produced by P. The decree merely ordered that the suit should be dismissed, the portion of the judgment as to the enhanceability of the rent not being embodied in the decree. P, therefore, had no right of appeal against that portion of the judgment. In a subsequent suit by N against P, for enhancement of rent of the same tenure, it was held that, on the rule laid down by the Privy Council in *Soorjeemonee Dayee v. Suddanund Mohapatter*, and *Krishna Behari Roy v. Bumvari Lal Roy*, P was precluded, by the decision in the former suit, from denying that the rent of the tenure was enhanceable, although the decision on that point was not embodied in the decree. The material findings in each case should be embodied in the decree; and if they are not, it is incumbent on the parties, to avoid their being bound by decisions against which they have no right of appeal, to apply to amend the decree in accordance with the judgment.—*Niamut Khan v. Phadu Buldia*, I. L. R., 6 Cal. 319.

B, who held a decree for money against I, caused certain property to be attached in execution of such decree as the property of his judgment-debtor. M, the wife of I, objected to such attachment, claiming such property as her own. Her objection was disallowed, and she consequently brought a suit against B to establish her right to such property. She died while that suit was pending, leaving by will such property to her sons. That suit proceeded in the names of her sons, who claimed such property under such will. The lower Courts only decided in that suit that such property belonged to M, and not to I, and it was therefore not liable to be sold in execution of B's decree against the latter. They did not consider the question whether M's sons were entitled to such property under the mother's will. In second appeal in that suit B contended, that I, as an heir to M, was entitled to a fourth share of such property,

and such share was liable to be sold in execution of such decree. M's sons did not contend before the High Court that they were entitled to the whole of such property under their mother's will to the exclusion of I. The High Court allowed B's contention. B brought a fourth share of such property to sale in execution of his decree, and purchased it himself. Thereupon M's sons sued him for such share, claiming it under their mother's will. *Held* that their mother's will was a matter which should have been made a ground of defence by M's sons in the course of the trial of the second appeal in the former suit between them and B, and that, not having been so made, it was *res judicata* in the sense of s. 13, Explanation II., Act X. of 1877.—Sultan Ahmad and others (Plaintiffs) v. Maqia Bakhsh (Defendant), I. L. R., 4 All. 21.

THE plaintiff sued to recover possession of certain houses and grounds as belonging to his zamindari, setting forth that the premises in question had been occupied by his paternal grandmother, on whose death the defendants had taken wrongful possession. The defendants claimed to be legally entitled to the premises in question, and contended that the plaintiff's suit was barred under this section by reason that the plaintiff had already, during his grandmother's lifetime, brought a suit against her and the defendant's father, as a co-defendant, to establish his right to the same premises, which suit has been dismissed. The defendants also pleaded limitation. It appeared that in the former suit the relief sought by the plaintiff was substantially to restrain his grandmother from acts of waste in alienating property which had belonged to her deceased husband by assigning it to her co-defendant; but that, as regards the property now claimed, although it was mentioned in the plaint, no charge had been made that she had assigned it, or intended to assign it, to her co-defendant, nor any allegation to show that the co-defendant had any interest in it. *Held*, reversing the decisions of the lower Courts, that, under the circumstances, the decision in the former suit was not a decision in a suit between the same parties or parties under whom they claimed, and that the cause of action in the present suit was not determined in the former suit. *Held* also that the defendant's plea of limitation could not be determined without a finding as to whether the plaintiff's grandmother, who died within the period of limitation, had held the premises with the plaintiff's leave, or as a trespasser.—Zamindar of Pittapuram v. Proprietors of Kolanka, I. L. R., 2 Mad. 23.

H. THE proprietor of a one-third share of a certain undivided estate, made a gift of such share to P. He subsequently, in February 1875, gave a mortgage of such share, in his capacity as P's guardian, to N and S, the two other co-sharers of such estate. In March 1878, P, having attained his age of majority, brought a suit, as a co-sharer of such estate, under such gift, against N and S for possession of certain land appertaining to such estate, on the ground that they were using such land as if they were the sole proprietors thereof. The lower Appellate Court, observing that such land was the property of the three co-sharers, that the mortgage of P's rights to N and S did not affect those rights as such, and that N and S were not justified in using such land, as they were the exclusive proprietors thereof, gave P a decree for possession of one-third share of such land. N and S appealed to the High Court on the ground that P should not have been awarded possession, as they were in possession of such land as mortgagees. The High Court remanded the case for the determination of the issue thus raised by N and S; and the lower Appellate Court found that N and S were in possession of P's share of such estate as mortgagees under the mortgage made by H above referred to, and of such land as such. P did not take any objection to this finding; and it was adopted by the High Court, and embodied in its final decree. In October 1879, P sued N for possession of his share in such estate, claiming under the gift from H, and alleging that the mortgage of such share by H to N was invalid. *Held* that, inasmuch as such mortgage was matter substantially in issue in the former suit, the matter in issue in the second suit was *res judicata* under Explanations I. and II., s. 13 of Act X. of 1877.—Nirman Singh (Defendant) v. Phulman Singh (Plaintiff), I. L. R., 4 All. 65.

IN 1864 the obligee of an instalment-bond, in which certain immoveable property was hypothecated as collateral security for the payment of the instalments, brought a suit upon such bond "against Z and A (the obligors) and the property hypothecated in the bond, defendants," claiming to recover instalments which were due and unpaid, and a declaration of his right to recover instalments which were not due as they fell due. He obtained a decree in such suit for "the amount claimed" against

the "two defendants." It was also provided in such decree that, "until the satisfaction of the entire amount of the bond, the plaintiff can realize the amount of each instalment by executing this decree." The obligee applied in execution of such decree to recover, by the sale of such property, which had passed into the hands of third parties after the passing of such decree, instalments which had become due after the passing of such decree and had not been paid: Such execution having been refused on the ground that such decree was a money-decree, the obligee brought a second suit upon such bond to recover such instalments by the enforcement of the lien therein created on such property. Held that, although the enforcement of such lien was claimed in the former suit, yet, inasmuch as it was very questionable whether the Court was competent to grant the second relief claimed in that suit, viz., a declaration of right to recover instalments which were not due in execution of a decree for instalments which were due, and the claim in the second suit was not the same as that in the former suit, the plaintiff asking for instalments said to be actually due, and not for a declaratory decree for instalments not due, the second suit was not barred by s. 13 of Act X. of 1877.—*Umrao Lal and another (Defendants) v. Behari Sing and another (Plaintiffs)*, I. L. R., 3 All. 297.

THE jurisdiction of a Small Cause Court is not ousted in a suit for damages for carrying away the produce of certain land when the defendant sets up title to the land in answer to the claim. S. 586 of the Code of Civil Procedure precludes a second appeal in a suit for damages under Rs. 500, although the suit has been instituted in the District Munsif's Court and not in a Court of Small Causes, and although a question of title has been raised by the defendant and decided. *Per* Turner, C.J.—When a suit is brought in a form in which it is cognizable by a Small Cause Court under Act XI. of 1866, the Court cannot decline jurisdiction if it appears that incidentally a question of title is raised which it has not jurisdiction to determine for any other purpose than the decision of the suit before it. Under such circumstances the Court may, however, properly grant a reasonable adjournment that the question may be litigated and determined by the proper tribunal. *Per* Muthisami Ayyar, J.—The question, what is a suit of the nature cognizable in Courts of Small Causes within the meaning of s. 586 of the Civil Procedure Code, has reference to the mode of adjudication and not to the *forum*, and the fact that the suit is instituted in the District Munsif's Court and not in a Court of summary jurisdiction makes no difference for the purposes of that section. "If the matter adjudicated on in a suit is only incidentally in issue or cognizable, the adjudication is final, whether by a Court of concurrent or limited jurisdiction, only for the purpose and object of that suit. *Per* Innes J.—The decree of a Small Cause Court in a case where a question of title is raised incidentally is no bar to a suit upon the title under s. 13, expl. 2, of the Civil Procedure Code, because the Small Cause Court is not competent to pass a decree upon the title.—*Manappa Mudali (Plaintiff) Appellant, v. S. T. McCarthy (First Defendant)*, Respondent, I. L. R., 3 Mad. 192.

THE decision by a competent Court, that an application for the execution of a decree is barred by limitation, has the effect of *res judicata*; and although such decision may be erroneous, yet so long as it remains unreversed in appeal it is valid and binding, and the question cannot be re-opened. A decision, that an application for execution is not time-barred, has a similar effect. On the 15th April 1868, the plaintiff applied for the execution of a decree held by him against the defendant, and certain houses were thereupon attached. In April 1869, the attachment was raised on the intervention of a third person. The plaintiff then brought a suit to establish his right to attach the houses, and obtained a decree on the 28th February 1871. An appeal was made, and the suit was finally decided in the plaintiff's favour in April 1873. After the plaintiff had obtained his original decree, and while the appeal was pending, he applied for the sale of the houses in execution on the 30th November 1871, and subsequently made three other applications within three years of each other, the last of which was dated the 30th October 1876. The Court rejected this application on the 28th November 1876, on the ground that the execution of the decree was barred, as more than three years had elapsed between the first and second application* (i.e., the applications of the 15th April 1868 and 30th November 1871). The plaintiff appealed against the order; but his appeal was rejected, because he had failed to produce with it a copy of the order appealed against. The plaintiff took no further steps in that proceeding, but made a fresh application for execution on the 10th August 1878. The Subordinate Judge rejected

it, on the ground that the execution was barred, the matter being *res judicata*. In appeal, the District Judge reversed that order, and allowed execution. On appeal to the High Court, *Held*, on the authority of *Mungul Pershad Dichit v. Grija Kant Lahiri Chowdry* (L. R. 8 Ind. Ap. 123) that the rule of *res judicata* applied, and that the application of the 30th November 1871 was time-barred, and, *à fortiori*, every subsequent application was barred. *Semble*.—A proceeding in execution is a proceeding which terminates in a decree as defined by s. 244 of the Civil Procedure Code (Act X. of 1877), and is, therefore, a suit within the meaning of the Code.—*Manjunāth Badrābhat* (Original Defendant), Appellant, *v.* Venkatesh Govind Shānbhog (Original Plaintiff), Respondent, I. L. R., 6 Bom. 54.

When foreign judgment
no bar to suit in British
India.

14. No foreign judgment shall operate as
a bar to a suit in British India—

- (a) if it has not been given on the merits of the case :
- (b) if it appears on the face of the proceedings to be founded on an incorrect view of international law or of any law in force in British India :
- (c) if it is, in the opinion of the Court before which it is produced, contrary to natural justice :
- (d) if it has been obtained by fraud :
- (e) if it sustains a claim founded on a breach of any law in force in British India.

THE above section applies to M. S. C. C. and P. S. C. C.

THE judgment of a foreign Court, obtained on a decree of a Court in British India, is no bar to the execution of the original decree.—*Fakuruddeen Mahomed Assan v. The Official Trustee of Bengal*, I. L. R., 7 Cal. 82.

CHAPTER II.

OF THE PLACE OF SUING.

Court in which suit to be
instituted.

15. Every suit shall be instituted in the
Court of the lowest grade competent to try it.

THE above section applies to M. S. C. C.

FOR the purpose of determining the question of jurisdiction, the valuation of a suit should be computed according to the market-value of the subject-matter of the suit, and not according to the special rules applicable to valuation fixed in Act VII. of 1870.—*Kālubia Bhiwāji v. Vishrām Mawāji*, I. L. R., 1 Bom. 543.

THE valuation of suits, for the purpose of jurisdiction, is perfectly distinct from their valuation for the fiscal purpose of court-fees. Therefore Court-fees Acts, which are fiscal enactments, are not to be resorted to for construing enactments which fix the valuation of suits for the purpose of determining jurisdiction.—*Dayachand Nemchand v. Hemchand Dharamchand*, I. L. R., 4 Bom. 515 (F. B.).

WHERE a person has preferred a claim to property attached in execution of a decree, on the ground that such property is not liable to such attachment, and an order is passed against him, and he sues to establish his right to such property: *Held* that the value of the subject-matter in dispute in such suit, for the purposes of jurisdiction, will be the amount of such decree.—*Gulzaree Lal v. Jadaun Rai*, I. L. R., 2 All. 799.

SECTION 6 of Act VIII. of 1859 (corresponding with s. 15 of Act X. of 1877), which provides that "every suit shall be instituted in the Court of the lowest grade competent to try it," does not affect the jurisdiction of a subordinate Judge to try a suit wherein several causes of action are joined, the cumulative value of which is over Rs. 1,000; notwithstanding that, if separate suits had been brought on these several causes, such suits must have been instituted in the court of the Munsif.—*Mashoolah Khan v. Ram Lall Agurwallah*, I. L. R., 6 Cal. 6.

Suits to be instituted where subject-matter situate.

16. Subject to the pecuniary or other limitations prescribed by any law, suits

- (a) for the recovery of immoveable property,
- (b) for the partition of immoveable property,
- (c) for the foreclosure or redemption of a mortgage of immoveable property,
- (d) for the determination of any other right to, or interest in, immoveable property,
- (e) for compensation for wrong to immoveable property,
- (f) for the recovery of moveable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate :

Provided that suits to obtain relief respecting, or compensation for wrong to, immoveable property, held by or on behalf of the defendant, may, when the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction he actually and voluntarily resides, or carries on business, or personally works for gain.

Explanation.—In this section ‘property’ means property situate in British India.

THE above section applies to M. S. C. C.

Suits to be instituted where defendants reside or cause of action arose.

17. Subject to the limitations aforesaid, all other suits shall be instituted in a Court within the local limits of whose jurisdiction—

- (a) the cause of action arises, or
- (b) all the defendants, at the time of the commencement of the suit, actually and voluntarily reside, or carry on business, or personally work for gain; or
- (c) any of the defendants, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain: provided that either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution.

Explanation I.—Where a person has a permanent dwelling at one place, and also a lodging at another place for a temporary purpose only, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary lodging.

Explanation II.—A Corporation or Company shall be deemed to carry on business at its sole or principal office in British India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place. ✚

Illustrations.

(a.) A is a tradesman in Calcutta. B carries on business in Dehli. B, by his agent in Calcutta, buys goods of A, and requests A to deliver them to the East Indian Railway Company. A delivers the goods accordingly in Calcutta. A may sue B for the price of the goods either in Calcutta, where the cause of action has arisen, or in Dehli, where B carries on business.

(b.) A resides at Simla, B at Calcutta, and C at Dehli, A, B, and C being together at Benares, B and C make a joint promissory note payable on demand, and deliver it to A. A may sue B and C at Benares, where the cause of action arose. He may also sue them at Calcutta, where B resides, or at Dehli, where C resides; but in each of these cases, if the non-resident defendant objects, the suit cannot be maintained without the leave of the Court.

THE above section applies to M. S. C. C.

18. In suits for compensation for wrong done to person or moveable property, if the wrong was done within the local limits of the jurisdiction of one Court, and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the plaintiff may, at his option, sue in either of the said Courts.

Illustrations.

(a.) A, residing in Dehli, beats B in Calcutta. B may sue A either in Calcutta or in Dehli.

(b.) A, residing in Dehli, publishes in Calcutta statements defamatory of B. B may sue A either in Calcutta or in Dehli.

(c.) A, travelling on the line of a Railway Company whose principal office is at Howrah, is upset and injured at Allahabad by negligence imputable to the Company. He may sue the Company either at Howrah or at Allahabad.

THE above section applies to M. S. C. C.

19. If the suit be to obtain relief respecting, or compensation for wrong to, immoveable property situate within the limits of a single district, but within the jurisdiction of different Courts, the suit may be instituted in the Court within whose jurisdiction any portion of the property is situate; provided that, in respect of the value of the subject-matter of the suit, the entire claim be cognizable by such Court.

If the immoveable property be situate within the limits of different districts, the suit may be instituted in any Court, otherwise competent to try it, within whose jurisdiction any portion of the property is situate.

THE above section applies to M. S. C. C.

UNDER Act X. of 1877, s. 19, it is not necessary to obtain the leave of the Court under cl. 12 of the Charter to sue in respect of immoveable property situate partly within and partly without the ordinary original civil jurisdiction of the High Court.—*Narain Singh v. Ram Lal Mookerjee*, I. L. R., 3 Cal. 370.

20. If a suit which may be instituted in more than one Court is instituted in a Court within the local limits of whose jurisdiction the defendant or all the defendants does not or do not actually and voluntarily reside, or carry on business, or personally work for gain, the defendant or any defendant may, after giving notice in writing to the other parties of his intention to apply to the Court to stay proceedings, apply to the Court accordingly;

and if the Court, after hearing such of the parties as desire to be heard, is satisfied that justice is more likely to be done by the suit being instituted in some other Court, it may stay proceedings either finally or till further order, and make such order as it thinks fit as to the costs already incurred by the parties or any of them.

In such case, if the plaintiff so requires, the Court shall return the plaint with an endorsement thereon of the order staying proceedings.

Every such application shall be made at the earliest possible opportunity, and in all cases before the issues are made. Application when to be made. settled; and any defendant not so applying shall be deemed to have acquiesced in the institution of the suit.

THE above section (except para. 4) applies to M. S. C. C. and P. S. C. C.

AN ACKNOWLEDGMENT in writing of a debt by a judgment-debtor is not such an acknowledgment as is contemplated by s. 20, and will not, therefore, operate to extend the period of limitation in favor of the judgment-creditor. The debt referred to in that section is not a judgment-debt, but a liability to pay money for which a suit can be brought.—*Mungol Prashad Dichit v. Shama Kanto Lahory Chowdhry*, I. L. R., 4 Cal. 708. See also I. L. R., 5 Cal. 894.

21. Where the Court, under section 20, stays proceedings, and the plaintiff re-institutes his suit in another Court, the plaint shall not be chargeable with any court-fee; provided that the proper fee has been levied on the institution of the suit in the former Court, and that the plaint has been returned by such Court.

THE above section applies to M. S. C. C. and P. S. C. C.

22. Where a suit may be instituted in more Courts than one, and such Courts are subordinate to the same Appellate Court, any defendant, after giving notice in writing to the other parties of his intention to apply to such Court to transfer the suit to another Court, may apply accordingly; and the Appellate Court, after hearing the other parties, if they desire to be heard, shall determine in which of the Courts having jurisdiction the suit shall proceed.

23. Where such Courts are subordinate to different Appellate Courts, but are subordinate to the same High Court, any defendant, after giving notice in writing to the other parties of his intention to apply to the High Court to transfer the suit to another Court having jurisdiction, may apply accordingly. If the suit is brought in any Court subordinate to a District Court, the application, together with the objections (if any) filed by the other parties, shall be submitted through the District Court to which such Court is subordinate. The High Court may, after considering the objections (if any) of the other parties, determine in which of the Courts having jurisdiction the suit shall proceed.

24. Where such Courts are subordinate to different High Courts, any defendant may, after giving notice in writing to the other parties of his intention to apply to the High Court within whose jurisdiction the Court in which the suit is brought is situate, apply accordingly.

If the suit is brought in any Court subordinate to a District Court, the application, together with the objections (if any), filed by the other parties, shall be submitted through the District Court to which such Court is subordinate ;

and such High Court shall, after considering the objections (if any), of the other parties, determine in which of the several Courts having jurisdiction the suit shall proceed.

25. The High Court or District Court may, on the application of any of the parties, after giving notice to the parties, and hearing such of them as desire to be heard, or of its own motion without giving such notice, withdraw any suit, whether pending in a Court of first instance or in a Court of appeal subordinate to such High Court or District Court, as the case may be, and try the suit itself, or transfer it for trial to any other such subordinate Court competent to try the same in respect of its nature and the amount or value of its subject-matter.

For the purposes of this section, the Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court.

The Court trying any suit withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

THE above section applies to M. S. C. C. and (except paras. 2 and 3) to P. S. C. C.

THE High Court cannot make an order of transfer of a case under Act X. of 1877, s. 25, unless the Court from which the transfer is sought to be made has jurisdiction to try it.—Govind Chunder Goswami v. Rungun, Money, I. L. R., 6 Cal. 60. •

THE High Court cannot make an order of transfer of a case under s. 25 of the Code of Civil Procedure, unless the Court from which the transfer is sought to be made has jurisdiction to try it.—Peary Lall Mozoomdar v. Komal Kishore Dassia, I. L. R., 6 Cal. 30.

Ss. 25 and 647 of the Civil Procedure Code (Act X. of 1877), are both applicable to Courts of Small Causes in the mufassal, and the former section is extended by the latter to execution-proceedings in such Courts. Under s. 25 of the Civil Procedure Code, Act X. of 1877, the District Judge has power to withdraw an application for execution of a decree from a subordinate Court (such as a Mufassal Court of Small Causes) and to dispose of it himself, or to transfer it to another subordinate Court competent to deal with it. The distinction made for the purposes of limitation between suits, appeals, and applications by the Limitation Acts, has no bearing upon a question of jurisdiction.—Báláji Ranchoddas as manager of the estate of Mohanlall Dalsukhran, Deceased (Applicant), I. L. R., 5 Bom. 680.

CHAPTER III.

OF PARTIES, AND THEIR APPEARANCES, APPLICATIONS, AND ACTS.

26. All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative, in respect of the same cause of action. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment.

But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person who is not found entitled to relief, unless the Court, in disposing of the costs of the suit, otherwise directs.

THE above section applies to M. S. C. C. and P. S. C. C.

27. Where a suit has been instituted in the name of the wrong person as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may, if satisfied that the suit has been so commenced through a *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person or persons to be substituted or added as plaintiff or plaintiffs upon such terms as the Court thinks just.

Court may substitute or add plaintiff for or to plaintiff suing.

THE above section applies to M. S. C. C. and P. S. C. C.

28. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative, in respect of the same matter.

Persons who may be joined as defendants.

And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

THE above section applies to M. S. C. C. and P. S. C. C.

A STRANGER to a contract of which specific performance is sought cannot be a party to the suit. Where, therefore, the plaintiff sued as against one defendant for specific performance of a contract to sell land, and as against another for a declaration that he was not entitled to any charge upon the said lands : *Held* that the latter defendant was improperly made a party to the suit.—*Luckumsey Ookerda (Plaintiff) v. Fazulla Cassumblay and others (Defendants)*, I. L. R., 5 Bom. 177.

READING ss. 28, 29, and 32 of the above Act together, where an application is made under s. 32 for the addition of a person, whether as plaintiff or defendant, such person should, as a general rule, be added only where there are questions directly arising out of and incidental to the original causes of action, in which such person has an identity or community of interest with the original plaintiff or defendant.—*Naraini Kuar v. Durjan Kuar, Naraini Kuar v. Piarey Lal*, I. L. R., 2 All. 738.

THE plaintiffs brought a suit to recover certain sums of money from the defendants, due to them under certain contracts which they alleged had been entered into by themselves, and one A D, as agent of the defendants, and asked for an account. The defendants, in their written statement, contended that there was no privity of contract between themselves and the plaintiffs, and denied the alleged agency of A D. The plaintiffs, before the hearing, applied to the Court to have A D added as a party-defendant under ss. 28 and 32 of Act X. of 1877, asking to be allowed to amend their plaint so as to pray for relief in the alternative against the original defendants or the said A D, or both against the original defendants and the said A D. *Held* that, under s. 28, they were entitled to the order on the authority of the case of *Child v. Stenning* (L. R., 5 Ch. D. 695).—*Buddrec Doss and another v. Hoare, Miller, and Co.*, I. L. R., 8 Cal. 170.

Per FIELD, J.—Where a person sued for rent sets up the title of a third party and alleges that he holds under, and pays rent to, him, such third party ought not to be made a party to the suit so as to convert a simple suit for arrears of rent into one for the determination of the title to the property in respect of which the rent is claimed. Such a suit raises only two issues, *viz.* :—(1) does the relation of landlord and tenant exist between the plaintiff and defendant? (2) are the alleged arrears of rent due and unpaid? and these are questions in which the plaintiff and defendant

are alone concerned, and no third party claiming a title adverse to the plaintiff can properly be made a party to the trial of these issues. S. 28 of the Civil Procedure Code is not imperative, but allows a discretion to be exercised; and in such a suit it is better, both in the interests of Government and for the proper adjudication of the question of title, that it should be tried by a competent Court in a suit directly framed and brought for that purpose.—*Lodai Mollah (Defendant) v. Kally Dass Roy (Plaintiff)*, I. L. R., 8 Cal. 238.

THE creditor of an insolvent, who had assigned all his property to trustees for the benefit of all his creditors generally, sued him for his debt, joining the trustees as defendants on the ground that they had refused to register his claim. The trustees had refused to register the claim on the ground that the plaintiff had not applied for its registration within the time notified by them, and that he would not consent to abide by the order which the High Court might make on an application by the trustees for its advice regarding the claims of creditors who, like the plaintiff, had applied for the registration of their claims after such time, but before the assets of the insolvent had been distributed. The deed of trust empowered the trustees to distribute the assets of the insolvent after a certain time among the creditors who had preferred their claims within that time, and declared that they should not be liable for such distribution to creditors who had not preferred their claims within that time; but it did not empower them to refuse to register claims made after that time, but before distribution of the assets. *Held* that the trustees had been properly joined as defendants in such suit; that their refusal to register the plaintiff's claim gave him a cause of action against them; and that, inasmuch as the plaintiff had applied for the registration of his claim before the distribution of the assets, the trustees had improperly refused to register it.—*Ajudhia Nath and others (Defendants) v. Anant Das and another (Plaintiff)*, I. L. R., 3 All. 799.

A, B, C, and D, were the proprietors of a 2a. 13g share in mouza E, and also of a 2a. 13g. share in a mouza F, both in the district of Bhāgalpur. On the 19th September 1872, A, B, C, and D mortgaged their shares in E and F, together with property in the district of Tirhut, to the plaintiff. On the 24th March 1873, A mortgaged his share in E and F to J. On the 13th November 1872, A and B mortgaged their shares in E to K. On the 25th March 1874, J obtained a decree on his mortgage, and the interests of A and B were purchased on the 5th January 1875 by L. On the 17th April 1874, M, to whom the first mortgage had been assigned, obtained a decree and attached the property mortgaged. L objected that he had already purchased the interests of A, and on the objection being allowed, M instituted a suit against L for a declaration of priority, and obtained a decree on the 9th August 1876. In execution of this decree the property first mortgaged was sold on the 4th March 1878, and after satisfying the mortgage, a surplus of Rs. 7,664 remained. After the institution of the first suit, and before L's purchase, the plaintiff instituted a suit upon his mortgage in the Tirhut Court without having obtained leave to include that portion of the mortgaged property situate in the Bhāgalpur district. On the 17th July 1874, a decree was made in this suit. On the 17th January 1877, K obtained a decree on his mortgage, and shares of A and B in E were sold, and purchased on the 3rd September 1877 by N. The plaintiff had his decree transferred for execution to the Bhāgalpur Court, and he attached the surplus sale-proceeds and a 1a. 9g. share in E. This attachment was withdrawn on the objection of L, who drew out the surplus sale-proceeds. The share purchased by N was also released from attachment. The plaintiff now sued L, N, and the mortgagors for a declaration that his decree of the 17th July 1874 affected the E property, to recover the surplus sale-proceeds from L, and in case the decree should not be valid to the extent mentioned, for a decree declaring his prior lien on the property in E. It was contended for the defendants that the Tirhut Court had no jurisdiction in respect of the Bhāgalpur property; that the suit was bad for multifariousness; that certain persons, co-sharers with the plaintiff, should have been made parties; and that the cause of action had been split. *Held* that the Tirhut Court had no jurisdiction in respect of the Bhāgalpur property; that the suit was not bad by reason of multifariousness; and that it was not necessary to make the plaintiff's co-sharers parties, as he might be regarded as contracting on behalf of himself and the other members of the family as undisclosed principals. *Held* also that the cause of action had been split.—*Bungsee Sing v. Soodist Lall*, I. L. R., 7 Cal. 739.

29. The plaintiff may, at his option, join as parties to the same
Joinder of parties liable suit all or any of the persons severally, or jointly
on same contract. and severally, liable on any one contract, includ-
ing parties to bills of exchange, hundis, and promissory notes.

THE above section applies to M. S. C. C. and P. S. C. C.

READING ss. 28, 29, and 32 of the above Act together, where an application is made under s. 32 for the addition of a person, whether as plaintiff or defendant, such person should, as a general rule, be added only where there are questions directly arising out of and incidental to the original causes of action, in which such person has an identity or community of interest with the original plaintiff or defendant.—*Naraini Kuar v. Durjan Kuar, Naraini Kuar v. Piarey Lal*, I. L. R., 2 All. 738.

30. Where there are numerous parties having the same interest in
One party may sue or de- one suit, one or more of such parties may, with
fend on behalf of all in the permission of the Court, sue or be sued, or
same interest. may defend, in such suit, on behalf of all parties so interested. But the Court shall in such case give, at the plaintiff's expense, notice of the institution of the suit to all such parties either by personal service or (if from the number of parties or any other cause such service is not reasonably practicable) by public advertisement, as the Court in each case may direct.

THE above section applies to M. S. C. C. and P. S. C. C.

AN order under s. 14, Act XX. of 1863, should be mandatory, and not prohibitory. Where a sacred book was kept at a temple, and was an object of veneration to the members of the sect entitled to worship there: *Held* that a suit would lie under s. 14 of Act XX. of 1863, by some of the persons interested in the temple, to restrain the superintendent from removing the book to another place, and that he should be directed to retain it as a portion of the furniture of the temple.—*Dhurum Singh v. Kishen Singh*, I. L. R., 7 Cal. 767.

A DECREE against a Karnavan of a Malabar tarwad, as such, is binding upon the members of that tarwad, though not parties to the suit, in the absence of fraud or collusion. A Karnavan is not a mere trustee, nor do the rules of Courts of Equity as to the necessity of making *cestui que* trusts parties to suits against trustees by strangers apply to the case of a Karnavan and the members of the tarwad. Explanation 5 of s. 13, Civil Procedure Code, is not limited to the case of a suit under s. 30. The members of a tarwad claim under a Karnavan, suing as such, within the meaning of explanation 5 of s. 13. Status of Karnavan discussed.—*Varanakot Narayanan Namburi v. Varanakot Narayanan Namburi*, I. L. R., 2 Mad. 32.

IN 1849, the Board of Revenue, acting under Reg. XIX. of 1810, interfered in the management of the affairs of a temple. In a suit relating to the affairs of the temple instituted in 1878, it did not appear whether any transfer of property had been made under s. 4 of Act XX. of 1863, but it did appear that, in 1865, the Judge of Patna had appointed a manager of the temple. *Held* that the right of the Government officers to control the affairs of the temple had been sufficiently proved. Section 14 of Act XX. of 1863 is generally applicable to all religious endowments, and while it, in one sense, restrains the ordinary Courts from dealing with cases against trustees of religious endowments, it gives special facilities for suits in the principal Civil Courts of the district by any of the persons interested in these endowments. *Quære*.—Whether, considering the provisions of s. 30 of the Civil Procedure Code, the retention of s. 14 of Act XX. of 1863 is at all necessary?

IN a suit by two of the worshippers at a certain mosque, instituted after having obtained the sanction of the Advocate-General under s. 539 of the Civil Procedure Code, against the mutawalli of the mosque, and two other persons to whom the mutawalli had mortgaged part of the endowed property to secure the repayment of a loan, it appeared that one of the mortgagees had sold some of the *wugf* property

in execution of a decree which he had obtained upon his mortgage, and the property had been purchased by the other mortgagee. The plaintiffs prayed that the property purchased might be declared to be *wugf*; that the sale in execution might be declared to be invalid; that a mutawalli might be appointed by the Court; and that the costs of doing the acts of the *wugf* might be defrayed from the profits of the property belonging to the endowment. *Held* that, so far as regarded that portion of the prayer as fell within the provisions of s. 539 of the Code, the plaintiffs were not entitled to sue, as they were not "persons having a direct interest in the trust" within the meaning of the section, and that the suit should have been instituted under s. 14 of Act XX. of 1863 after sanction obtained under s. 18. *Held* also that though the plaintiffs might possibly have obtained leave to sue under s. 30 of the Code on behalf of themselves and the other persons attending the mosque, they not having obtained such leave, were not entitled to institute the suit for the purpose of obtaining the relief asked for in the other prayers of the plaint. The words "trustee, manager, or superintendent of a mosque," &c., mentioned in Act XX. of 1863, mean the trustee, manager, or superintendent of a mosque, &c., to which the provisions of the Act are applicable, not the trustee, &c., of any mosque. And such persons are those to whom the provisions of Reg. XIX. of 1810 were applicable. The mosques, &c., to which the provisions of that Regulation were applicable, were mosques for the support of which endowments had been granted in land by the Government of the country or by individuals, and the mosques, &c., to which the provisions of Act XX. of 1863 apply, are, not any mosques, &c., but any mosques for the support of which endowments in land have been made by the Government or private individuals.—*Jan Ali and another (Plaintiffs) v. Ram Nath Mundul and others (Defendants)*, I. L. R., 8 Cal. 32.

31. No suit shall be defeated by reason of the misjoinder of parties, and the Court may, in every suit, deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

Nothing in this section shall be deemed to enable plaintiffs to join in respect of distinct causes of action.

THE above section applies to M. S. C. C. and P. S. C. C.

IN A SUIT instituted against six different parties, plaintiff prayed for *khās* possession of a four-anna share in a certain lot, or, in the alternative, for a decree for arrears of rent against the defendants, or such of the defendants as should on enquiry appear to be respectively liable. It appeared that plaintiff had been kept out of possession by one only of the six defendants, and that, if he was entitled to a decree for arrears of rent, another of the defendants was liable for a portion only of such arrears: *Held* (with reference to Act X. of 1877, ss. 31 and 45) that the suit was not improperly framed; that there was no objection to the prayer for alternative relief; and that the suit should not have been dismissed for joinder of causes of action.—*Janokinath Mookerjee v. Ramrunjun Chuckerbutty*, I. L. R., 4 Cal. 949.

THE creditor of an insolvent, who had assigned all his property to trustees for the benefit of all his creditors generally, sued him for his debt, joining the trustees as defendants on the ground that they had refused to register his claim. The trustees had refused to register the claim on the ground that the plaintiff had not applied for its registration within the time notified by them, and that he would not consent to abide by the order which the High Court might make on an application by the trustees for its advice regarding the claims of creditors who, like the plaintiff, had applied for the registration of their claims after such time, but before the assets of the insolvent had been distributed. The deed of trust empowered the trustees to distribute the assets of the insolvent after a certain time among the creditors who had preferred their claims within that time, and declared that they should not be liable for such distribution to creditors who had not preferred their claims within that time; but it did not empower them to refuse to register claims made after that time, but before distribution of the assets. *Held* that the trustees had been properly joined as defendants in such suit; that their refusal to register the plaintiff's claim gave him a cause of action against them; and that, inasmuch as the plaintiff had applied for the regis-

tration of his claim before the distribution of the assets, the trustees had improperly refused to register it.—*Ajudhia Nath and others (Defendants) v. Anant Das and another (Plaintiff)*, I. L. R., 3 All. 799.

A, B, C, and D, were the proprietors of a 2a. 13g. share in mouza E, and also of a 2a. 13g. share in mouza F, both in the district of Bhágálpur. On the 19th September, 1872, A, B, C, and D mortgaged their shares in E and F, together with property in the district of Tirhut, to the plaintiff. On the 24th March, 1873, A mortgaged his share in E and F to J. On the 13th November, 1872, A and B mortgaged their shares in E to K. On the 25th March, 1874, J obtained a decree on his mortgage, and the interests of A and B were purchased on the 5th January, 1875, by L. On the 17th April 1874, M, to whom the first mortgage had been assigned, obtained a decree and attached the property mortgaged. L objected that he had already purchased the interests of A, and on the objection being allowed, M instituted a suit against L for a declaration of priority, and obtained a decree on the 9th August, 1876. In execution of this decree the property first mortgaged was sold on the 4th March, 1878, and after satisfying the mortgage, a surplus of Rs. 7,664 remained. After the institution of the first suit, and before L's purchase, the plaintiff instituted a suit upon his mortgage in the Tirhut Court without having obtained leave to include that portion of the mortgaged property situate in the Bhágálpur district. On the 17th July 1874, a decree was made in this suit. On the 17th January, 1877, K obtained a decree on his mortgage, and shares of A and B in E were sold, and purchased on the 3rd September, 1877, by N. The plaintiff had his decree transferred for execution to the Bhágálpur Court, and he attached the surplus sale-proceeds and a 1a. 9g. share in E. This attachment was withdrawn on the objection of L, who drew out the surplus sale-proceeds. The share purchased by N was also released from attachment. The plaintiff now sued L, N, and the mortgagors for a declaration that his decree of the 17th July, 1874, affected the E property, to recover the surplus sale-proceeds from L, and in case the decree should not be valid to the extent mentioned, for a decree declaring his prior lien on the property in E. It was contended for the defendants that the Tirhut Court had no jurisdiction in respect of the Bhágálpur property; that the suit was bad for multifariousness; that certain persons, co-sharers with the plaintiff, should have been made parties; and that the cause of action had been split. *Held* that the Tirhut Court had no jurisdiction in respect of the Bhágálpur property; that the suit was not bad by reason of multifariousness; and that it was not necessary to make the plaintiff's co-sharers parties, as he might be regarded as contracting on behalf of himself and the other members of the family as undisclosed principals. *Held* also that the cause of action had been split.—*Bungsee Sing v. Soodist Lall*, I. L. R., 7 Cal. 739.

32. The Court may, on or before the first hearing, upon the ap-

plication of either party, and on such terms
 Court may dismiss or add parties.

as the Court thinks just, order that the name
 of any party, whether as plaintiff or as defendant, improperly joined, be
 struck out;

and the Court may at any time, either upon or without such appli-
 cation, and on such terms as the Court thinks just, order that any
 plaintiff be made a defendant, or that any defendant be made a plaintiff,
 and that the name of any person who ought to have been joined, whether
 as plaintiff or defendant, or whose presence before the Court may be
 necessary in order to enable the Court effectually and completely to
 adjudicate upon and settle all the questions involved in the suit, be
 added.

Consent of person added
 as plaintiff or next friend.

No person shall be added as a plaintiff, or
 as the next friend of a plaintiff, without his
 own consent thereto.

Parties to suits institut-
 ed or defended under sec-
 tion 30.

Any person on whose behalf a suit is in-
 stituted or defended under section 30 may ap-
 ply to the Court to be made a party to such suit.

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All parties whose names are so added as defendants shall be served with a summons in manner hereinafter mentioned, and (subject to the provisions of the Indian Limitation Act, 1877, section 22) the proceedings as against them shall be deemed to have begun only on the service of such summons.

Conduct of suit. The Court may give the conduct of the suit to such plaintiff as it deems proper.

THE above section applies to M. S. C. C. and P. S. C. C.

AN ORDER refusing an application under Act X. of 1877, s. 32, by a person to be added as a defendant in a suit, is not applicable.—*Karman Bibi v. Misri Lal*, I. L. R., 2 All. 904.

THE above section does not contemplate any application to the Court by the person proposed to be added.—*Monindrobhoosun Biswas v. Shosheebhoosun Biswas*, I. L. R., 5 Cal. 882.

UNDER s. 32 of the Code of Civil Procedure, no person can be added as a plaintiff unless he has previously consented thereto; and if a person objects to be added as a plaintiff, the proper course is to make him a defendant.—*Uma Sundari Dasi v. Ramji Haldar*, I. L. R., 7 Cal. 242.

IN A suit for the partition of joint family property, the mortgagees of the right, title, and interest of the plaintiff applied under Act X. of 1877, s. 32, to be added as parties: *Held* that their presence was not necessary in order "to enable the Court effectually and completely to adjudicate and settle all the questions involved in the suit" within the meaning of the section.—*Monindrobhoosun Biswas v. Shosheebhoosun Biswas*, I. L. R., 5 Cal. 882.

READING ss. 28, 29, and 32 of the above Act together, where an application is made under s. 32 for the addition of a person, whether as plaintiff or defendant, such person should, as a general rule, be added only where there are questions directly arising out of and incidental to the original causes of action, in which such person has an identity or community of interest with the original plaintiff or defendant.—*Naraini Kuar v. Durjan Kuar*, *Naraini Kuar v. Piarey Lal*, I. L. R., 2 All. 738.

IN A suit for rent, where the defendant alleged that a person not on the record had a joint interest with the plaintiff in the property in respect of which the rent was due. *Held*, where the plaintiff disputed this, and objected to such course being taken, that it was improper to add such person as co-plaintiff, and that, if added at all, it should be as defendant, in order that the issue between him and the plaintiff might be properly tried. *Held* also that in such a case an appeal lies under s. 501 of the Civil Procedure Code.—*Googlee Sahoo v. Premnall Sahoo*, I. L. R., 7 Cal. 148.

THE plaintiffs brought a suit to recover certain sums of money from the defendants, due to them under certain contracts which they alleged had been entered into by themselves, and one A D, as agent of the defendants, and asked for an account. The defendants, in their written statement, contended that there was no privity of contract between themselves and the plaintiffs, and denied the alleged agency of A D. The plaintiffs, before the hearing, applied to the Court to have A D added as a party-defendant under ss. 28 and 32 of Act X. of 1877, asking to be allowed to amend their plaint so as to pray for relief in the alternative against the original defendants or the said A D, or both against the original defendants and the said A D. *Held* that, under s. 28 they were entitled to the order on the authority of the case of *Child v. Stenning* (L. R., 5 Ch. D. 695).—*Buddree Doss and another v. Hoare, Miller, and Co.*, I. L. R., 8 Cal. 170.

B AND N, the mortgagees of a mehal, granted the mortgagors a lease of the mehal, the mortgagors agreeing to pay the mortgagees a certain rent half-yearly on account of the right they held in equal shares, and that, in default of payment of such rent, "the mortgagees" should be entitled to sue for payment. The mortgagors having made default in payment of the rent, and N refusing to join in a suit against the mortgagors to enforce payment, B sued them alone for a moiety of the rent due. The Revenue Court of first instance held, with reference to Act XVIII. of 1873, s. 106,

that B could not sue separately : *Held* by the High Court that the order of the Revenue Court of first appeal directing *inter alia* that the Court of first instance should re-try the suit after making N a defendant in the suit, was not illegal, notwithstanding that the provisions of Act X. of 1877, s. 32, were not made applicable to the procedure of the Revenue Courts by Act XVIII. of 1873.—*Ship Gopal v. Baldeo Sahai*, I. L. R., 2 All. 264.

IN A suit by the purchaser of goods by sample against the vendors for damages, on the ground that the bulk did not correspond with the sample, the vendors applied, under Act X. of 1877, s. 32, to add the vendor to them on the same samples of the goods as a defendant, alleging that the question between the plaintiffs and themselves was the same as between themselves and their vendor. *Held*, refusing the application, that the plaintiffs "ought not to have the vendor to the defendants made a party to the suit, and that his presence was not necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit."—*Mahomed Badsha v. Nicol Fleming*, I. L. R., 4 Cal. 355. Followed in a case where two suits against K for possession of the property of B, deceased, were instituted in the Court of a Subordinate Judge by parties claiming adversely to one another as heirs to B, and the Judge, on the application of the plaintiffs in these suits, under s. 32, added the plaintiffs in the first suit as defendants in the second, and the plaintiffs in the second suit as defendants in the first.—*Naraini Kuar v. Durjan Kuar, Naraini Kuar v. Piarey Lal*, I. L. R., 2 All. 738.

THE words in para. 1 of s. 53 of the Code of Civil Procedure (Act X. of 1877), "at or before the first hearing," are merely directory and not mandatory, and, therefore, a plaintiff may, subsequently to the "first hearing," amend his plaint, provided such amendment does not alter the original character of his suit. The plaintiffs (mortgagors) in a suit against their mortgagees sought only for production of the mortgage-deed or for an account, although the averments in the plaint warranted a prayer for redemption. Subsequently to the first hearing of the suit they applied to be allowed to amend the plaint by adding a prayer for redemption : *Held* that the provisions of s. 53 of the Civil Procedure Code (Act X. of 1877) did not preclude the Court from permitting the amendment to be made. It is competent to a Court, at any time before passing a decree, to frame an additional issue embracing a matter not included in the plaint (provided it be not inconsistent with it), or in the written statement, but which may appear upon the allegations made on oath by the parties, or by any person present on their behalf, or made by the pleaders of such parties or persons. S. 34 of the Civil Procedure Code (Act X. of 1877) limits the time within which a defendant may object for want of parties, but it does not so limit the right of the plaintiff to add parties. In some cases s. 34 would not prevent even a defendant from objecting to the want of a party after the first hearing, *e. g.*, where after the first hearing and before decree a co-parcener or remainderman or reversioner is born, or where a woman (who is a party) is married to a man who is not a party to the suit. The objection did not exist at or before the first hearing, and, therefore, could not have been made or waived by the defendant ; and if he made it at the earliest opportunity after it came into existence, he would have satisfied the spirit of s. 34.—*R. and N. Modhe (Plaintiff) v. S. Donger (Defendant)*, I. L. R., 5 Bom. 609.

33. Where a defendant is added, the plaint, if previously filed,

Where defendant added, shall, unless the Court direct otherwise, be plaintiff to amend. amended in such manner as may be necessary, and an amended copy of the summons shall be served on the new defendant and the original defendants.

THE above section applies to M. S. C. C. and P. S. C. C.

34. All objections for want of parties, or for joinder of parties who

Time for taking objections as to non-joinder or misjoinder. have no interest in the suit, or for misjoinder as co-plaintiffs or co-defendants, shall be taken at the earliest possible opportunity, and in all cases before the first hearing ; and any such objection not so taken shall be deemed to have been waived by the defendant.

THE above section applies to M. S. C. C. and P. S. C. C.

ACT XIV.] PARTIES, THEIR APPEARANCES, APPLICATIONS, AND ACTS. 349

THE words in para. 1 of s. 53 of the Code of Civil Procedure (Act X. of 1877) "at or before the first hearing" are merely directory and not mandatory, and, therefore, a plaintiff may, subsequently to the "first hearing," amend his plaint, provided such amendment does not alter the original character of his suit. The plaintiffs (mortgagors) in a suit against their mortgagees sought only for production of the mortgage-deed or for an account, although the averments in the plaint warranted a prayer for redemption. Subsequently to the first hearing of the suit they applied to be allowed to amend the plaint by adding a prayer for redemption: *Held* that the provisions of s. 53 of the Civil Procedure Code (Act X. of 1877) did not preclude the Court from permitting the amendment to be made. It is competent to a Court, at any time before passing a decree, to frame an additional issue embracing a matter not included in the plaint (provided it be not inconsistent with it), or in the written statement, but which may appear upon the allegations made on oath by the parties, or by any person present on their behalf, or made by the pleaders of such parties or persons. S. 34 of the Civil Procedure Code (Act X. of 1877) limits the time within which a defendant may object for want of parties, but it does not so limit the right of the plaintiff to add parties. In some cases s. 34 would not prevent even a defendant from objecting to the want of a party after the first hearing, *e. g.*, where after the first hearing and before decree a co-parcener or remainderman or revisioner is born, or where a woman (who is a party) is married to a man who is not a party to the suit. The objection did not exist at or before the first hearing, and, therefore could not have been made or waived by the defendant; and if he made it at the earliest opportunity after it came into existence, he would have satisfied the spirit of s. 34.—*R. and N. Modhe (Plaintiff) v. S. Donger (Defendant)* I. L. R., 5 Bom. 609.

35. When there are more plaintiffs than one, any one or more of

Each of several plaintiffs or defendants may authorize any other to appear, &c., for him.

them may be authorized by any other of them to appear, plead, or act for such other in any proceeding under this Code: and in like manner, when there are more defendants than one, any one or more of them may be authorized by any other of them to appear, plead, or act for such other in any such proceeding.

Authority to be in writing signed and filed.

The authority shall be in writing signed by the party giving it, and shall be filed in Court.

THE above section applies to M. S. C. C. and P. S. C. C.

Recognized Agents and Pleadors.

36. Any appearance, application, or act in or to any Court, required

Appearances, &c., may be in person, by recognized agent, or by pleader.

or authorized by law to be made or done by a party to a suit or appeal in such Court, may, except when otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf:

Provided that any such appearance shall be made by the party in person, if the Court so direct.

THE above section applies to M. S. C. C. and P. S. C. C.

37. The recognized agents of parties by whom such appearances,

Recognized agents.

applications, and acts may be made or done, are—

(a) persons holding general powers-of-attorney from parties not

Persons holding powers-of-attorney from parties out of jurisdiction.

resident within the local limits of the jurisdiction of the Court within which limits the appearance, application, or act is made or done,

authorizing them to make and do such appearances, applications, and acts on behalf of such parties;

(b) mukhtárs duly certificated under any law for the time being in force, and holding special powers-of-attorney authorizing them to do, on behalf of their principals, such acts as may legally be done by mukhtárs;

(c) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application, or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications, and acts.

Nothing in the former part of this section applies to the territories now administered respectively by the Lieutenant-Governor of the Panjáb, and the Chief Commissioners of Oudh and the Central Provinces; but in those territories the recognized agents of parties by whom such appearances, applications, and acts may be made and done, shall be such persons as the Local Government may, from time to time, by notification in the official Gazette, declare in this behalf.

THE above section applies to M. S. C. C. and (except clause b and the last para.) to P. S. C. C.

Ss. 76 AND 37, cl. c, are to be construed together, and are intended to carry out the same scheme of relief, which rests upon the idea that, where an agent has been put forward substantially to take the place of his principal within a particular jurisdiction, he should take the place of such principal (at the option of any person who has dealt with him) in any legal proceedings that may arise out of the business or work in which the agent has been virtually a local principal.—Goculdás Dwárkádás v. Ganeshlál Halasroy, I. L. R., 4 Bom. 416.

THE term non-resident in s. 37, cl. a, of the Code of Civil Procedure (Act X. of 1877), covers every absence which may reasonably be supposed to have been within the contemplation of the Legislature in using that term: thus, where a Mār-wáli had resided for forty years at Pen, and had also a place of business there, but who had gone to his native country to get his sisters married, and had been absent upwards of four months, it was held that he was 'non-resident' within the local limits of the jurisdiction of the Pen Court, and that a person holding a general power of attorney from him was a recognized agent within the meaning of the section.—Rámchandra Sakháram (Appellant) v. Keshav Durgáji by his agent Hakma Depaji (Respondent), I. L. R., 6 Bom. 100.

38. Processes served on the recognized agent of a party to a suit Service of process on or appeal shall be as effectual as if the same recognized agent. had been served on the party in person, unless the Court otherwise directs.

The provisions of this Code for the service of process on a party to a suit shall apply to the service of process on his recognized agent.

THE above section applies to M. S. C. C. and P. S. C. C.

39. The appointment of a pleader to make or do any appearance, application, or act as aforesaid, shall be in writing, and such appointment shall be filed in Court. Appointment of pleader.

When so filed, it shall be considered to be in force until revoked with the leave of the Court, by a writing signed by the client and filed in Court, or until the client or the pleader dies, or all proceedings in the suit are ended so far as regards the client.

No advocate of any High Court established by Royal Charter shall be required to present any document empowering him to act.

THE above section applies to M. S. C. C. and P. S. C. C.

40. Processes served on the pleader of any party, or left at the office Service of process on or ordinary residence of such pleader, relative to a suit or appeal, and whether the same be for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents; and, unless the Court otherwise directs, shall be as effectual for all purposes in relation to the suit or appeal as if the same had been given to or served on the party in person.

THE above section applies to M. S. C. C. and P. S. C. C.

41. Besides the recognized agents described in section 37, any Agent to receive process. person residing within the jurisdiction of the Court may be appointed an agent to accept service of process.

Such appointment may be special or general, and shall be made by His appointment to be in writing, and to be filed in Court. an instrument in writing, signed by the principal; and such instrument, or, if the appointment be general, a duly attested copy thereof, shall be filed in Court.

CHAPTER IV.

OF THE FRAME OF THE SUIT.

42. Every suit shall, as far as practicable, be so framed as to afford ground for a final decision upon the subjects in dispute, and so to prevent further litigation concerning them.

IN DISPOSING of a second appeal, the High Court is competent, under Act X. of 1877, s. 42, to consider the question whether the plaintiff has any cause of action or not, although such question has not been raised by the defendant-appellant in the Courts below or in his memorandum of second appeal, but is raised for the first time at the hearing of such appeal.—*Lachman Prasad v. Bahadur Singh*, I. L. R., 2 All. 884.

43. Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

If a plaintiff omit to sue in respect of, or intentionally relinquish, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

A person entitled to more than one remedy in respect of the same cause of action may sue for all or any of his remedies; but if he omits (except with the leave of the Court obtained before the first hearing) to sue for any of such remedies, he shall not afterwards sue for the remedy so omitted.

For the purpose of this section, an obligation and a collateral security for its performance shall be deemed to constitute but one cause of action.

Illustration.

A lets a house to B at a yearly rent of Rs. 1,200. The rent for the whole of the years 1881 and 1882 is due and unpaid. A sues B only for the rent due for 1882. A shall not afterwards sue B for the rent due for 1881.

THE above section applies to. M. S. C. C. and P. S. C. C.

THE obligee of a bond for the payment of money, hypothecating immoveable property as a collateral security for such payment, sued for the monies due on the bond, but omitted to claim the enforcement of his lien, and obtained a decree only for the payment of the amount of the bond-debt. He subsequently sued to enforce his lien: *Held* that, under Act X. of 1877, s. 43, as amended by Act XII. of 1879, s. 7, he could not be permitted to sue to enforce his lien.—*Gumani v. Ram Padarath Lal*, I. L. R., 2 All. 838.

J HAD a right to share in a certain estate, as an heir to her father, and also as an heir to her brother. She transferred such right by sale to H. H sued S, who had acquired the whole estate by purchase at sales in execution of decrees against the other heirs of J's brother, for J's share as one of her brother's heirs in such estate, and obtained a decree. H then sued S for J's share as one of the father's heirs in such estate. *Held* that H was debarred from bringing the second suit by the provisions of s. 43 of Act X. of 1877.—*Shafkat-un-nissa (Plaintiff) v. Shib Sahai and others (Defendants)*, I. L. R., 4 All. 171.

AT THE close of the Bengalee year 1283, which was on the 11th of April 1877, the defendant owed to the plaintiff, his landlord, the rents of his holding for the years 1281, 1282, and 1283. The plaintiff, in the month of April 1878, before the close of the year 1284, instituted a suit for the rent for 1281 only, and obtained a decree. On the 10th of April 1879, he instituted another suit for the recovery of the rents for the years 1282, 1283, and 1284. *Held* that the claim for the years 1282 and 1283 was barred under s. 43 of the Code of Civil Procedure.—*Taruck Chunder Mookerjee v. Panchu Mohini Debya*, I. L. R., 6 Cal. 791.

WHERE a plaintiff originally sued for a certain sum upon his khatta-books, and an objection was taken by the defendant that he ought to have sued upon a hat-chitta, whereupon the plaintiff amended his plaint by suing for the amount admittedly due upon the hat-chitta, in addition to the amount he claimed upon his khatta-books: *Held* that, when the plaintiff amended his plaint by suing upon the hat-chitta, his causes of action, which, when the suit was originally framed, were distinct, became united; that there was no *relinquishment* in the original suit within the terms of Act VIII. of 1859, s. 7 (corresponding with Act X. of 1877, s. 43); and that the plaint was rightly amended.—*Ram Tarrun Koondoo v. Hossein Buksh*, I. L. R., 3 Cal. 785.

A MORTGAGEE had two remedies in respect of the mortgagor's breach to pay the stipulated interest at the time fixed by the contract of mortgage, one being a suit on foreclosure-proceedings to convert the mortgage into a sale, and the other a suit to recover his money against his debtor by enforcement of his lien against the mortgaged property. He sued for the first remedy in respect of such breach, omitting the second. His suit was dismissed on the ground that he was not entitled to such remedy until the expiration of the mortgage-term. He afterwards sued for the second remedy. *Held* that, inasmuch as the mortgagee was not, at the time of his suing for the first remedy, "a person entitled to more than one remedy," not being "entitled" to the first, but only to the second, his omission at that time to sue for the second remedy was not, under s. 43 of Act X. of 1877, a bar to his afterwards suing for it.—*Piari (Defendant) v. Khiali Ram (Plaintiff)*, I. L. R., 3 All. 857.

44. Rule a.—No cause of action shall, unless with the leave of the Court, be joined with a suit for the recovery of immoveable property, or to obtain a declaration of title to immoveable property, except—

(a) claims in respect of mesne profits or arrears of rent in respect of the property claimed,

(b) damages for breach of any contract under which the property or any part thereof is held, and

(c) claims by a mortgagee to enforce any of his remedies under the mortgage.

Rule b.—No claim by or against an executor, administrator, or heir as such, shall be joined with claims by or against him personally, unless the last mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor, administrator, or heir, or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents.

THE above section (except rule a) applies to M. S. C. C. and P. S. C. C.

THE plaintiff sued for specific performance of an agreement in writing, which set forth, *inter alia*, that the defendants had agreed to sell, &c., under certain conditions as agreed upon. The defendants alleged that the written agreement did not contain the whole of the agreement between the parties, and offered parol evidence in support of their contention. *Held* (reversing the judgment of Wilson, J.) that the parol evidence was admissible to show what was meant by the clause "certain conditions as agreed upon": *Per* Pontifex, J. (Garth, C.J., dissenting).—The evidence was admissible under proviso 1, s. 92 of the Evidence Act (I. of 1872). Discussion as to the meaning of s. 92 of the Evidence Act, and of ss. 17, 22, and 26 of the Specific Relief Act. *Per* Pontifex, J.—It is of the essence of specific performance that part only of an agreement should not be performed. Part of the purchase-money had been advanced by the plaintiffs to the defendants, for which the defendants had given their promissory notes; and the plaint contained a prayer that the defendants be ordered to pay over the amount of the notes. *Held* (affirming the decision of Wilson, J.) that there was no misjoinder of causes of action within the meaning of s. 44, rule a of the Code of Civil Procedure (Act X. of 1877).—*G. M. Cutts v. T. F. Brown*, I. L. R., 6 Cal. 328.

45. Subject to the rules contained in Chapter II. and in section 44, Plaintiff may join several causes of action. the plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant, or the same defendants jointly, may unite such causes of action in the same suit.

But if it appear to the Court that any such causes of action cannot be conveniently tried or disposed of together, the Court may, at any time before the first hearing, of its own motion or on the application of any defendant, or at any subsequent stage of the suit, if the parties agree, order separate trials of any such causes of action to be had, or make such other order as may be necessary or expedient for the separate disposal thereof.

When causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate

subject-matters at the date of instituting the suit, whether or not an order has been made under the second paragraph of this section.

THE above section applies to M. S. C. C. and P. S. C. C.

A STRANGER to a contract of which specific performance is sought cannot be a party to the suit. Where, therefore, the plaintiff sued as against one defendant for specific performance of a contract to sell land, and as against another for a declaration that he was not entitled to any charge upon the said lands: *Held* that the latter defendant was improperly made a party to the suit.—*Luckinsey Ookerda (Plaintiff) v. Fazulla Cassumbhoy and others (Defendants)*, I. L. R., 5 Bom. 177.

IN A SUIT instituted against six different parties, plaintiff prayed for *khás* possession of a four-anna share in a certain lot, or, in the alternative, for a decree for arrears of rent against the defendants, or such of the defendants as should, on enquiry, appear to be respectively liable. It appeared that plaintiff had been kept out of possession by one only of the six defendants, and that, if he was entitled to a decree for arrears of rent, another of the defendants was liable for a portion only of such arrears: *Held* (with reference to Act X. of 1877, ss. 31 and 45) that the suit was not improperly framed; that there was no objection to the prayer for alternative relief; and that the suit should not have been dismissed for joinder of causes of action.—*Janokinath Mookerjee v. Ramrunjun Chuckerbutty*, I. L. R., 4 Cal. 949.

THE sons of R and of K and of S possessed proprietary rights in two *maháls* of a certain mouza. P possessed proprietary rights in one of those *maháls*. In April, 1879, the sons of R sold their proprietary rights in both *maháls* to G. In August, 1879, the sons of K sold their proprietary rights in both *maháls* to G. Later in the same month the sons of S sold their proprietary rights in both *maháls* to N. G sued N to enforce a right of pre-emption in respect of the sale to the latter, and obtained a decree. P then sued to enforce a right of pre-emption in respect of the three sales mentioned above, so far as they related to the *mahál* of which he was a co-sharer, joining as defendants G and N and the vendors to them. G alone objected in the Court of first instance to the frame of the suit. That Court overruled the objection, and gave P a decree. The lower Appellate Court reversed this decree on the ground of misjoinder. *Held* that in respect of G there was no misjoinder, but that in respect of the other defendants there was misjoinder of both causes of action and parties. Inasmuch as, however, G alone objected to the frame of the suit, and the defect did not affect the merits of the case or the jurisdiction of the Court, the lower Appellate Court ought not, regard being had to s. 578 of Act X. of 1877, to have reversed the decree of the Court of first instance by reason of such defect.—*Kalian Singh (Plaintiff) v. Gur Dayal (Defendant)*, I. L. R., 4 All. 163.

46. Any defendant alleging that the plaintiff has united in the same suit several causes of action which cannot be conveniently disposed of in one suit may, at any time before the first hearing, or, where issues are settled, before any evidence is recorded, apply to the Court for an order confining the suit to such of the causes of action as may be conveniently disposed of in one suit.

THE above section applies to M. S. C. C. and P. S. C. C.

47. If, on the hearing of such application, it appears to the Court that the causes of action are such as cannot all be conveniently disposed of in one suit, the Court may order any of such causes of action to be excluded, and may direct the plaint to be amended accordingly, and may make such order as to costs as may be just.

Every amendment made under this section shall be attested by the signature of the Judge.

THE above section applies to M. S. C. C. and P. S. C. C.

CHAPTER V.

OF THE INSTITUTION OF SUITS.

Suits to be commenced by plaintiff.

48. Every suit shall be instituted by presenting a plaint to the Court or such officer as it appoints in this behalf.

THE above section applies to M. S. C. C. and P. S. C. C.

49. The plaint must be distinctly written in the language of the Court; provided that, if such language is not English, the plaint may (with the permission of the Court) be written in English; but in such case, if the defendant so require, a translation of the plaint into the language of the Court shall be filed in Court.

THE above section applies to M. S. C. C. and P. S. C. C.

Particulars to be contained in plaint.

50. The plaint must contain the following particulars:—

- (a) the name of the Court in which the suit is brought;
- (b) the name, description, and place of residence of the plaintiff;
- (c) the name, description, and place of residence of the defendant, so far as they can be ascertained;
- (d) a plain and concise statement of the circumstances constituting the cause of action, and where and when it arose;
- (e) a demand of the relief which the plaintiff claims; and
- (f) if the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished.

In money-suits.

If the plaintiff seeks the recovery of money, the plaint must state the precise amount, so far as the case admits.

In a suit for mesne-profits, and in a suit for the amount which will be found due to the plaintiff on taking unsettled accounts between him and the defendant, the plaint need only state approximately the amount sued for.

When the plaintiff sues in a representative character, the plaint

Where plaintiff sues as representative. should shew, not only that he has an actual existing interest in the subject-matter, but that he has taken the steps necessary to enable him to institute a suit concerning it.

Illustrations.

- (a.) A sues as B's executor. The plaint must state that A has proved B's will.
- (b.) A sues as C's administrator. The plaint must state that A has taken out administration to C's estate.
- (c.) A sues as guardian of D, a Muhammadan minor. A is not D's guardian according to Muhammadan law and usage. The plaint must state that A has been specially appointed D's guardian.

The plaintiff must shew that the defendant is or claims to be interested in the subject-matter, and that he is liable to be called upon to answer the plaintiff's demand.

Illustration.

A dies, leaving B his executor, C his legatee, and D a debtor to A's estate. C sues D to compel him to pay his debt in satisfaction of C's legacy. The plaintiff must shew that B has causelessly refused to sue D, or that B and D have colluded for the purpose of defrauding C, or other such circumstances rendering D liable to C.

If the cause of action arose beyond the period ordinarily allowed by any law for instituting the suit, the plaintiff must shew the ground upon which exemption from such law is claimed.

Grounds of exemption from limitation-law.

THE above section applies to M. S. C. C. and P. S. C. C.

IN all cases, whether a plaint is verified by the plaintiff or by some other person, the party verifying should state shortly what paragraphs he verifies of his own knowledge, and what paragraphs he believes to be true from the information of others.—In the matter of Upendro Lall Bose, F. L. R., 6 Cal. 675.

THERE is no law at present in force in the mufassal which obliges a person, claiming under a will, to obtain probate of the will, or otherwise establish his right as executor, administrator, or legatee, before he can sue in respect to any property which he claims under the will. In any suit or proceeding instituted by him, it is for the Court, in which the suit or proceeding is pending, to determine, for the purposes of such suit or proceeding, whether the will is genuine and valid, and confers upon the plaintiff or applicant the right which he claims.—Bhagvānsang Bhārājī (Applicant) v. Bechardās Harjivāndās (Opponent), I. L. R., 6 Bom. 73.

51. The plaint shall be signed by the plaintiff and his pleader (if any), and shall be verified at the foot by the plaintiff, or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case :

Provided that, if the plaintiff is, by reason of absence or for other good cause, unable to sign the plaint, it may be signed by any person duly authorized by him in this behalf.

THE above section applies to M. S. C. C. and P. S. C. C.

A PLAINT, signed by a person holding a general power of attorney to sue on behalf of the plaintiff, is properly signed within the meaning of the proviso in Act X. of 1877, s. 51 (as amended by Act XII. of 1879).—H. Kastolino v. Rustomji Dádábháí, I. L. R., 4 Bom. 468 (F. B.).

IN all cases, whether a plaint is verified by the plaintiff or by some other person, the party verifying should state shortly what paragraphs he verifies of his own knowledge, and what paragraphs he believes to be true from the information of others.—In the matter of Upendro Lall Bose, I. L. R., 6 Cal. 675.

52. The verification must be to the effect that the same is true to the knowledge of the person making it, except as to matters stated on information and belief, and that as to those matters he believes it to be true.

Verification to be signed and attested.

The verification shall be signed by the person making it.

THE above section applies to M. S. C. C. and P. S. C. C.

THE Court must be satisfied, under s. 52, that a person, other than a plaintiff, verifying the plaint, is acquainted with the facts of the case; but in the case of a person holding a general power of attorney, or of any other recognized agent, the Court will not insist on any extreme stringency of proof.—*H. Kastolino v. Rustomji Dádábhái*, I. L. R., 4 Bom. 468 (F. B.).

S. 52 does not require the verification of a plaint to be made in the presence of an officer of the Court; but having regard to the necessity of satisfying the Court that the person, other than the plaintiff, who verifies the plaint, is acquainted with the facts of the case, it is desirable that a verification by such a person should be made in the presence of the Court, unless the Court be satisfied that there is sufficient ground for dispensing with its attendance.—*H. Kastolino v. Rustomji Dádábhái*, I. L. R., 4. Bom. 468 (F. B.).

53. The plaint may, at the discretion of the Court, and at or before

When plaint may be rejected, returned for amendment, or amended. the first hearing, be rejected, returned for amendment within a time to be fixed by the Court, or amended then and there, upon such

terms as to the payment of costs occasioned by the amendment as the the Court thinks fit,

(a) if it does not state correctly and without prolixity the several particulars hereinbefore required to be specified therein; or

(b) if it contains any particulars other than those so required; or

(c) if it is not signed and verified as hereinbefore required; or

(d) if it does not disclose a cause of action; or

(e) if it is not framed in accordance with section 42; or

(f) if it is wrongly framed by reason of non-joinder or misjoinder of parties, or because the plaintiff has joined causes of action which ought not to be joined in the same suit:

Provided that a plaint cannot be altered so as to convert a suit of one character into a suit of another and inconsistent character.

Attestation of amendment. When a plaint is amended, the amendment shall be attested by the signature of the Judge.

THE above section applies to M. S. C. C. and (except clause e.) to P. S. C. C.

WHERE, at the first hearing of a suit, the plaint is returned for amendment within a fixed time under the provisions of Act X. of 1877, s. 53, and it is amended accordingly, it cannot afterwards be again returned for amendment.—*Badr-un-nissa v. Muhaminad Jan*, I. L. R., 2 All. 671.

THE plaintiff in a suit applied for the amendment of the plaint. The defendant objected to the amendment, and a day was fixed by the Court for the "admission or rejection of the petition, and the determination of the defendant's objections thereto." The Court, after hearing the parties, made an order allowing the "petition of amendment," and rejecting the defendant's objections. The defendant appealed from such order to the High Court. *Held* that, inasmuch as orders amending plaints then and there are not made appealable by Act X. of 1877, and it was into this category, if into any at all, that such order must fall, such order was not appealable.—*Rajindra Kishore Singh (Defendant) v. Rada Prosad Singh (Plaintiff)*, I. L. R., 3 All. 854.

IN A SUIT for confirmation of possession and declaration of title in respect of land, where the plaint did not disclose any facts from which it could be said that the defendants denied the plaintiffs' title, but from the proceedings in the original cause it was established that, before the suit was brought, there was a dispute existing between the parties as regards the title, and that a decree in favour of the plaintiffs had been passed by the Original Court on the merits of the case: *Held* that though the plaint might have been rejected in the first instance under s. 53 of the Civil

Procedure Code, on the ground that it did not disclose any cause of action, it was too late for an Appellate Court to reverse the decree solely on that ground, without being satisfied that no such cause of action was established on the evidence.—*Shah Ahmed Sujad v. Taree Rai*, I. L. R., 7 Cal. 343.

S. 53 of the Civil Procedure Code, which provides that a plaint cannot be amended so as to convert a suit of one character into a suit of another and inconsistent character, does not prevent a plaintiff, who has been ousted after suit brought for declaration of title, from amending his plaint by adding a prayer for possession. If the congregation of a church as a body cease to follow the observances of a particular form of worship, and in preference for forty years follow those of a different form of worship, there would be no one left for whom and by whom the original form of worship can be continued, the objects of the original trust cease to exist, and the church-funds and property become impressed with a trust for the performance of the later form of worship. Where a defendant out of the jurisdiction of the Court was summoned to produce a letter, and did not comply with the summons, but appeared by pleader at the last moment at the hearing of the suit, and service of notice on the pleader to produce the letter would have been nugatory, secondary evidence of the contents of the letter was admitted under section 66, proviso 6 of the Evidence Act.—*Bishop Mellus v. The Vicar Apostolic of Malabar*, I. L. R., 2 Mad. 295.

THE words in para. 1 of s. 53 of the Code of Civil Procedure (Act X. of 1877), "at or before the first hearing," are merely directory and not mandatory, and, therefore, a plaintiff may, subsequently to the "first hearing," amend his plaint, provided such amendment does not alter the original character of his suit. The plaintiffs (mortgagors) in a suit against their mortgagees sought only for production of the mortgage-deed or for an account, although the averments in the plaint warranted a prayer for redemption. Subsequently to the first hearing of the suit they applied to be allowed to amend the plaint by adding a prayer for redemption: *Held* that the provisions of s. 53 of the Civil Procedure Code (Act X. of 1877) did not preclude the Court from permitting the amendment to be made. It is competent to a Court, at any time before passing a decree, to frame an additional issue embracing a matter not included in the plaint (provided it be not inconsistent with it), or in the written statement, but which may appear upon the allegations made on oath by the parties, or by any person present on their behalf, or made by the pleaders of such parties or persons. S. 34 of the Civil Procedure Code (Act X. of 1877) limits the time within which a defendant may object for want of parties, but it does not so limit the right of the plaintiff to add parties. In some cases s. 34 would not prevent even a defendant from objecting to the want of a party after the first hearing, *e.g.*, where after the first hearing and before decree a co-parcener or remainderman or reversioner is born, or where a woman (who is a party) is married to a man who is not a party to the suit. The objection did not exist at or before the first hearing, and, therefore, could not have been made or waived by the defendant; and if he made it at the earliest opportunity after it came into existence, he would have satisfied the spirit of s. 34.—*R. and N. Modhe (Plaintiff) v. S. Donger (Defendant)*, I. L. R., 5 Bom. 609.

When plaint shall be rejected. **54.** The plaint shall be rejected in the following cases:—

(a) if the relief sought is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so:

(b) if the relief sought is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so:

(c) if the suit appears from the statement in the plaint to be barred by any positive rule of law:

(d) if the plaint, having been returned for amendment within a time fixed by the Court, is not amended within such time.

THE above section applies to M. S. C. C. and P. S. C. C.

AN APPEAL lies against an order rejecting a plaint on the ground of its being insufficiently stamped.—*Ajoodhya Pershad v. Gunga Pershad*, I. L. R., 6 Cal. 249.

S. 54 of Act X. of 1877, which directs that a plaint shall be rejected in certain cases, applies only to the initial stages of a suit before a plaint has been registered, whereas the application of section 10 of the Court Fees Act, which directs that a suit shall be dismissed in a certain case, is not susceptible of restriction to any particular stage.—*Valika Kesava Vadhyan v. Suppan Nair*, I. L. R., 2 Mad. 308.

THE law may lay down, for purposes of revenue, certain rules for the valuation of suits; but such valuation cannot be accepted as a criterion of the actual amount or value of the claim upon which the jurisdiction of a Court depends. The actual value of the estate to which the plaintiff claims to be entitled, and not the value which it may eventually represent to the plaintiff, is the value of the subject-matter.—*Bai Mahkar v. Bulakhi Chaku*, I. L. R., 1 Bom. 538.

THE assessment of the court-fee in a suit by a subordinate tenure-holder to recover possession of a definite portion of an entire estate paying a permanently settled annual revenue to Government should be made under the first part of sub-division a, cl. 5 of s. 7 of the Court Fees Act. A plaint can only be rejected under s. 54 of Act X. of 1877 before it is registered.—*Hubbul Hossein and others (Defendants) v. Mahomed Reza and others (Plaintiffs)*, I. L. R., 8 Cal. 192.

WHERE, under Act VIII. of 1859, s. 336, a memorandum of appeal is returned for the purpose of being corrected, the Appellate Court should specify a time for such correction. Where an appellant presented an appeal within the period of limitation prescribed therefor, and the Appellate Court returned the memorandum of appeal for correction, the appeal again presented some days after the period of limitation was held presented within time, the date of its presentation being the date it was presented.—I. L. R., 1 All. 260.

55. When a plaint is rejected, the Judge shall record with his own

Procedure on rejecting hand an order to that effect with the reason for
plaint. such order.

THE above section applies to M. S. C. C.

56. The rejection of the plaint on any of the grounds hereinbefore

When rejection of plaint mentioned shall not, of its own force, preclude
does not preclude presenta- the plaintiff from presenting a fresh plaint in
tion of fresh plaint. respect of the same cause of action.

THE above section applies to M. S. C. C. and P. S. C. C.

When plaint shall be **57.** The plaint shall be returned to be
returned to be presented presented to the proper Court in the following
to proper Court. cases :—

(a) if a suit has been instituted in a Court whose grade is lower or higher than that of the Court competent to try it, where such Court exists, or where no option as to the selection of the Court is allowed by law :

(b) if, in a suit relating to immoveable property, but not coming under the proviso to section 16, it appears that no part of such property is situate within the local limits of the jurisdiction of the Court to which the plaint is presented :

(c) if, in any other case, it appears that the cause of action did not arise, and that none of the defendants are dwelling, or carrying on business, or personally working for gain, within such local limits.

On returning a plaint, the Judge shall, with his own hand, endorse

Procedure on returning thereon the date of its presentation and return,
plaint. the name of the party presenting it, and a brief
statement of the reason for returning it.

THE above section applies to M. S. C. C. and (except clause c) to P. S. C. C.

A SUIT to redeem a usufructuary mortgagee of certain lands was instituted in the Munsif's Court. After the suit had been admitted, and the parties called on to produce evidence, the Munsif ordered the plaint in the suit to be returned to the plaintiff for presentation in the proper Court on the ground that the suit should have been instituted in the Court of the subordinate Judge, the value of the property in suit being beyond the jurisdiction of a Munsif: *Held* that, under Act VIII. of 1859, the Munsif's order was appealable to the lower Appellate Court, and, under Act X. of 1877, the lower Appellate Court's order to the High Court.—I. L. R., 1 All. 620.

ALTHOUGH Act X. of 1877, s. 57, contemplates the return of the plaint should error be patent when it is first presented, yet there is nothing in the wording of that section which forbids the return of the plaint at a later stage in the suit. Where, therefore, after the issues in a suit were framed, the Court decided that it had no jurisdiction, and returned the plaint to be presented in the proper Court: *Held* that in so doing the Court acted under s. 57: and its decision, not coming within the definition of a "decree" in Act XII. of 1879, s. 2, was not appealable as such, but was appealable under Act X. of 1877, s. 588, as an order.—*Abdul Samad v. Rajendra Kishor Singh*, I. L. R., 2 All. 357.

THE Court of first instance made an order returning the plaint in a suit to be presented to the proper Court, on the ground that it was not competent to try such suit. On appeal from such order the Appellate Court, holding that the Court of first instance was competent to try such suit, made an order "decreeing the appeal." It subsequently made an additional order directing that the case "should be returned for re-trial." On appeal to the High Court from such additional order, *held* that the appeal would not lie, as it was in reality one from an order passed in appeal from an order returning a plaint, which, under the last clause of s. 588 of Act X. of 1877, was final, and not an appeal from an order remanding a case under s. 562, the character of the original order of the Appellate Court not being altered by the passing of the additional order.—*Krishna Ram (Defendant) v. Narsingh Sevak Singh and others (Plaintiffs)*, I. L. R., 3 All. 855.

AN ALLOTTEE, under a private partition, sued to stay subsequent partition-proceedings brought under Reg. XIX. of 1814, and to have his possession confirmed. The defendants objected to the valuation of the suit, and to the suit being heard by the Civil Courts, no proceedings having first been instituted before the Revenue Authorities. *Held* that such a suit should be considered to be one for a declaratory decree, or for something in the nature of an injunction, and that, therefore, the plaint should not be stamped according to the value of the entire estate. That the question, whether the Collector would have brought the lands to partition, depended upon whether they were held "in common tenancy;" if they were not so held, the Collector would be only competent to make an assignment of the revenue in proportion to the several portions of the land held by the shareholders. That a private partition is no bar to proceedings in the Revenue Courts under s. 30 of Reg. XIX. of 1814. A Munsif dismissed a suit, on the ground that, if it had been properly valued, it would not have come within his jurisdiction. The District Judge affirmed the Munsif's judgment, and directed the plaint to be returned for presentation to the proper Court under s. 57 of the Civil Procedure Code. This was not done. *Held* that a second appeal would lie. *Ajoodhia Lall v. Gumani Lall* (2 C. L. R. 134) approved. *Ajoodhya Pershad v. Kristo Dyal* (15 W. R. 165) dissented from.—*Joy-nath Roy (Plaintiff) v. Lall Bahadour Singh and others (Defendants)*, I. L. R., 8 Cal. 126.

58. The plaintiff shall endorse on the plaint, or annex thereto, a

Procedure on admitting memorandum of the documents (if any) which
plaint. he has produced along with it; and, if the

plaint be admitted, shall present as many copies on plain paper of the
plaint as there are defendants, unless the Court by reason of the length
of the plaint or the number of the defendants, or for any other sufficient

Concise statements. reason, permits him to present a like number
of concise statements of the nature of the

claim made, or of the relief or remedy required, in the suit, in which
case he shall present such statements.

If the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, such statements shall show in what capacity the plaintiff or defendant sues or is sued.

The plaintiff may, by leave of the Court, amend such statements so as to make them correspond with the plaint.

The chief ministerial officer of the Court shall sign such memorandum and copies or statements if, on examination, he finds them to be correct.

The Court shall also cause the particulars mentioned in section 50 Register of suits. to be entered in a book to be kept for the purpose, and called the Register of civil suits. Such entries shall be numbered in every year according to the order in which the plaint is admitted.

THE above section applies to M. S. C. C.

59. If a plaintiff sues upon a document in his possession or power, he shall produce it in Court when the plaint is presented, and shall, at the same time, deliver the document, or a copy thereof, to be filed with the plaint.
 Production of document on which plaintiff sues.
 Delivery of document or copy.

If he rely on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint.
 List of other documents.

THE above section applies to M. S. C. C. and P. S. C. C.

60. In the case of any such document not in his possession or power, he shall, if possible, state in whose possession or power it is.
 Statement in case of documents not in his possession or power.

THE above section applies to M. S. C. C. and P. S. C. C.

61. In case of any suit founded upon a negotiable instrument, if it be proved that the instrument is lost, and if an indemnity be given by the plaintiff, to the satisfaction of the Court, against the claims of any other person upon such instrument, the Court may make such decree as it would have made if the plaintiff had produced the instrument in Court when the plaint was presented, and had, at the same time, delivered a copy of the instrument to be filed with the plaint.
 Suits on lost negotiable instruments.

THE above section applies to M. S. C. C. and P. S. C. C.

62. If the document on which the plaintiff sues be an entry in a shop-book or other book in his possession or power, the plaintiff shall produce the book at the time of filing the plaint, together with a copy of the entry on which he relies.
 Production of shop-book.

The Court, or such officer as it appoints in this behalf, shall forthwith mark the document for the purpose of identification; and, after examining and comparing the copy with the original, and attesting the copy if found correct, shall return the book to the plaintiff, and cause the copy to be filed.
 Original entry to be marked and returned.

THE above section applies to M. S. C. C.

63. A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, and which is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

Nothing in this section applies to documents produced for cross-examination of the defendant's witnesses, or in answer to any case set up by the defendant, or handed to a witness merely to refresh his memory.

THE above section applies to M. S. C. C. and P. S. C. C.

CHAPTER VI.

OF THE ISSUE AND SERVICE OF SUMMONS.

Issue of Summons.

64. When the plaint has been registered, and the copies or concise statements required by section 58 have been filed, a summons may be issued to each defendant to appear and answer the claim on a day to be therein specified,

- (a) in person, or
- (b) by a pleader duly instructed and able to answer all material questions relating to the suit, or
- (c) by a pleader accompanied by some other person able to answer all such questions.

Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court:

Provided that no such summons shall be issued when the defendant has appeared at the presentation of the plaint, and admitted the plaintiff's claim.

THE above section applies to M. S. C. C. and (except the words "and the copies or concise statements required by section 58 have been filed") to P. S. C. C.

Copy or statement annexed to summons.

65. Every such summons shall be accompanied with one of the copies or concise statements mentioned in section 58.

THE above section applies to M. S. C. C.

Court may order defendant or plaintiff to appear in person.

66. If the Court sees reason to require the personal appearance of the defendant, the summons shall order him to appear in person in Court on the day therein specified.

If the Court sees reason to require the personal appearance of the plaintiff on the same day, it may make an order for such appearance.

THE above section applies to M. S. C. C.

No party to be ordered to appear in person unless resident

67. No party shall be ordered to appear in person unless he resides

(a) within the local limits of the Court's ordinary original jurisdiction, or

(b) without such limits and at a place less than fifty, or, where there is railway-communication for five-sixths of the distance between the place where he resides and the place where the Court is situate, two hundred miles from the Court-house.

THE above section applies to M. S. C. C. and P. S. C. C.

68. The Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit; and the summons shall contain a direction accordingly :

Summons to be either to settle issues or for final disposal.

Provided that, in every suit heard by Courts of Small Causes, the summons shall be for the final disposal of the suit.

THE above section applies to M. S. C. C. and P. S. C. C.

69. The day for the appearance of the defendant shall be fixed by the Court with reference to its current business, the place of residence of the defendant, and the time necessary for the service of the summons; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.

What shall be deemed 'sufficient time' must be determined with reference to the circumstances of the case.

THE above section applies to M. S. C. C. and P. S. C. C.

70. The summons to appear and answer shall order the defendant to produce any document in his possession or power, containing evidence relating to the merits of the plaintiff's case, or upon which the defendant intends to rely in support of his case.

Summons to order defendant to produce documents required by plaintiff or relied on by defendant.

THE above section applies to M. S. C. C. and P. S. C. C.

71. When the summons is for the final disposal of the suit, it shall direct the defendant to produce, on the day fixed for his appearance, the witnesses upon whose evidence he intends to rely in support of his case.

On issue of summons for final disposal, defendant to be directed to produce his witnesses.

THE above section applies to M. S. C. C. and P. S. C. C.

Service of Summons.

72. The summons shall be delivered to the proper officer of the Court, to be served by him or one of his subordinates.

Delivery of summons for service.

THE above section applies to M. S. C. C. and P. S. C. C.

A SUIT under Act IX. of 1872, s. 72, to recover from a creditor the amount of an over-payment made to him by mistake, is a suit for damages within the meaning of Act XI. of 1865, s. 6, and is accordingly cognizable by a Mufassal Small Cause Court.—*Badr-un-nissa v. Muhammad Jan*, I. L. R., 2 All. 671.

73. Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the Court.

Mode of service.

THE above section applies to M. S. C. C. and P. S. C. C.

Service on several defendants.

74. When there are more defendants than one, service of the summons shall be made on each defendant:

Provided that, if the defendants are partners, and the suit relates to a partnership-transaction or to an actionable wrong in respect of which relief is claimable from the firm, the service may be made, unless the Court directs otherwise, either (a) on one defendant for himself and for the other defendants, or (b) on any person having the management of the business of the partnership at the principal place, within the local limits of the Court's ordinary original civil jurisdiction of such business.

THE above section applies to M. S. C. C. and P. S. C. C.

75. Whenever it may be practicable, the service shall be made on the defendant in person, unless he have an agent empowered to accept the service, in which case service on such agent shall be sufficient.

Service to be on defendant in person when practicable, or on his agent.

THE above section applies to M. S. C. C. and P. S. C. C.

76. In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons issues, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service.

Service on agent by whom defendant carries on business.

For the purpose of this section, the master of a ship is the agent of his owner or charterer.

THE above section applies to M. S. C. C. and P. S. C. C.

SERVICE unduly made under s. 76 does not become effectual by reason of the fact of such service being subsequently notified to the parties really interested as defendants. *Semble*.—Service duly effected under s. 76 is effectual without reference to the circumstance of its being or not being communicated to the real defendants.—*Goculdás Dwárkádás v. Ganeshlál Halasroy*, I. L. R., 4 Bom. 416.

TO SATISFY the conditions of Act X. of 1877, s. 76, as to service of summons on an agent, there must be a person residing without the local jurisdiction, but carrying on business or work within those limits by a manager or agent, and sued on account of such work, i.e. business either actually itself carried on by the agent or manager, or forming part of the business in the sense of a connected course of transactions to the management of which he has been duly appointed.—*Goculdás Dwárkádás v. Ganeshlál Halasroy*, I. L. R., 4 Bom. 416.

SS. 76 AND 37, cl. c, are to be construed together, and are intended to carry out the same scheme of relief, which rests upon the idea that, where an agent has been put forward substantially to take the place of his principal within a particular jurisdiction, he should take the place of such principal (at the option of any person who has dealt with him) in any legal proceedings that may arise out of the business or work in which the agent has been virtually a local principal.—*Goculdás Dwárkádás v. Ganeshlál Halasroy*, I. L. R., 4 Bom. 416.

THUS, where a firm which carried on business at Agra, and had no place of business in Bombay, employed G as its agent in Bombay in certain dealings which it had with the plaintiff. The letters and telegrams of the firm to G were sent to the plaintiff's place of business, or addressed to G as an individual, and not in the name of the firm; nor did G himself initiate any business, or in any way stand between the firm and the plaintiff. *Held* that G was not the manager or agent of the firm, within the meaning of s. 76, upon whom summons could be served in an action against the firm.—*Goculdás Dwárákádás v. Ganeshlál Halasroy*, I. L. R., 4 Bom. 416.

77. In a suit to obtain relief respecting, or compensation for wrong to, immoveable property, if the service cannot be made on the defendant in person, and the defendant have no agent empowered to accept the service, it may be made on any agent of the defendant in charge of the property.

78. If in any suit the defendant cannot be found, and if he have no agent empowered to accept the service of the summons on his behalf, the service may be made on any adult male member of the family of the defendant who is residing with him.

Explanation.—A servant is not a member of the family within the meaning of this section.

THE above section applies to M. S. G. C. and P. S. C. C.

79. When the serving-officer delivers or tenders a copy of the summons to the defendant personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original summons.

THE above section applies to M. S. C. C. and P. S. C. C.

80. If the defendant or other person refuses to sign the acknowledgment,

or if the serving-officer cannot find the defendant, and there is no agent empowered to accept the service of the summons on his behalf, nor any other person on whom the service can be made,

the serving officer shall affix a copy of the summons on the outer door of the house in which the defendant ordinarily resides, and then return the original to the Court from which it issued, with a return endorsed thereon or annexed thereto, stating that he has so affixed the copy and the circumstances under which he did so.

THE above section applies to M. S. C. C. and P. S. C. C.

81. The serving-officer shall, in all cases in which the summons has been served under section 79, endorse or annex, or cause to be endorsed or annexed, on or to the original summons, the time when, and the manner in which, the summons was served.

THE above section applies to M. S. C. C. and P. S. C. C.

82. When a summons is returned under section 80, the Court shall examine the serving-officer on oath touching his proceedings, and may make such further enquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served, or order such service as it thinks fit.

Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding the service, or that, for any other reason, the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court-house, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided, or in such other manner as the Court thinks fit.

Substituted service.

THE above section applies to M. S. C. C. and P. S. C. C.

IN cases of substituted service, it is not sufficient to show that the notice has been attached to the door, unless the condition which renders such a mode of service good, *viz.* that the person who ought to be served is keeping out of the way, has been first established to the satisfaction of the Court.—(P. C.) 2 P. C. R. 836 (19 W. R. 353; 12 B. L. R. 229). See also 22 W. R. 482; 24 W. R. 381.

WHERE substituted service of summons is ordered under Act X. of 1877, s. 82, a sufficient time ought, under s. 84, to be given for notice of the fact to reach the defendant wherever he may be; and if an *ex-parte* decree be obtained by the plaintiff, the Court, on being satisfied that the time fixed was insufficient, will set aside the decree.—*Mirza Ally Bebanee v. Syed Hyder Hoosein*, I. L. R., 2 Bom. 449.

83. The service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally.

Effect of substituted service.

THE above section applies to M. S. C. C. and P. S. C. C.

When service substituted, time for appearance to be fixed.

84. Whenever service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require.

THE above section applies to M. S. C. C. and P. S. C. C.

WHERE substituted service of summons is ordered under Act X. of 1877, s. 82, a sufficient time ought, under s. 84, to be given for notice of the fact to reach the defendant wherever he may be; and if an *ex-parte* decree be obtained by the plaintiff, the Court, on being satisfied that the time fixed was insufficient, will set aside the decree.—*Mirza Ally Bebanee v. Syed Hyder Hoosein*, I. L. R., 2 Bom. 449.

85. If the defendant resides within the jurisdiction of any Court other than the Court in which the suit is instituted, and has no agent resident within the local limits of the jurisdiction of the latter Court empowered to accept the service of the summons, such Court shall send the summons, either by one of its officers or by post, to any Court, not being a High Court, having jurisdiction at the place where the defendant resides, by which it can be conveniently served, and shall fix such time for the appearance of the defendant as the case may require.

Service of summons when defendant resides within jurisdiction of another Court, and has no agent to accept service.

The Court to which the summons is sent shall, upon receipt thereof, proceed as if it had been issued by such Court, and shall then return the summons to the Court from which it originally issued, together with the record (if any) made under this paragraph.

THE above section applies to M. S. C. C. and P. S. C. C.

86. Whenever any process, issued by any Court established beyond the limits of the towns of Calcutta, Madras, Bombay, and Rangoon, is to be served within any such town, it shall be sent to the Court of Small Causes within whose jurisdiction the process is to be served,

and such Court of Small Causes shall deal with such process in the same manner as if the process had been issued by itself, and shall then return the process to the Court from which it issued.

THE above section applies to M. S. C. C.

87. If the defendant be in jail, the summons shall be delivered to the officer in charge of the jail in which the defendant is confined, and such officer shall cause the summons to be served upon the defendant.

The summons shall be returned to the Court from which it issued, with a statement of the service endorsed thereon, and signed by the officer in charge of the jail, and by the defendant.

THE above section applies to M. S. C. C. and P. S. C. C.

88. If the jail in which the defendant is confined is not in the district in which the suit is instituted, the summons may be sent by post or otherwise to the officer in charge of such jail, and such officer shall cause the summons to be served upon the defendant, and shall return the summons to the Court from which it issued, with a statement of the service endorsed thereon, and signed as provided in section 87.

THE above section applies to M. S. C. C. and P. S. C. C.

89. If the defendant resides out of British India, and has no agent in British India empowered to accept the service, the summons shall be addressed to the defendant at the place where he is residing, and forwarded to him by post if there be postal communication between such place and the place where the Court is situate.

THE above section applies to M. S. C. C. and P. S. C. C.

90. If there be a British Resident or Agent of Government in or for the territory in which the defendant resides, the summons may be sent to such Resident or Agent, by post or otherwise, for the purpose of being served upon the defendant; and if the Resident or Agent returns the summons with an endorsement under his hand that the summons

has been served on the defendant in manner hereinbefore directed, such endorsement shall be conclusive evidence of the service.

THE above section applies to M. S. C. C. and P. S. C. C.

91. The Court may, notwithstanding anything hereinbefore contained, substitute for the summons a letter signed by the Judge or such officer as he appoints in this behalf, when the defendant is, in the opinion of the Court, of a rank which entitles him to such mark of consideration.

The letter shall contain all the particulars required to be stated in the summons, and, subject to the provisions contained in section 92, shall be treated in all respects as a summons.

THE above section applies to M. S. C. C. and P. S. C. C.

92. When a letter is so substituted for a summons, it may be sent to the defendant by post or by a special messenger selected by the Court, or in any other manner which the Court thinks fit; unless the defendant has an agent empowered to accept service of summons, in which case the letter may be delivered or sent to such agent.

THE above section applies to M. S. C. C. and P. S. C. C.

Service of Process.

93. Every process issued under this Code shall be served at the expense of the party on whose behalf it is issued, unless the Court otherwise directs.

The court-fee leviable for such service shall be levied within a time to be fixed by the Court before the process is issued.

THE above section applies to M. S. C. C. and P. S. C. C.

94. All notices and orders required by this Code to be given to or served on any person shall be in writing, and shall be served in the matter hereinbefore provided for the service of summons.

THE above section applies to M. S. C. C. and P. S. C. C.

Postage.

95. Postage, where chargeable on any notice, summons, or letter issued under this Code, and forwarded by post, and the fee for registering the same, shall be paid within a time to be fixed by the Court before the communication is forwarded:

Provided that the Local Government, with the previous sanction of the Governor-General in Council, may remit such postage, or fee, or both, or may prescribe a scale of court-fees to be levied in lieu thereof.

THE above section applies to M. S. C. C. and P. S. C. C.

CHAPTER VII.

OF THE APPEARANCE OF THE PARTIES, AND CONSEQUENCE OF NON-APPEARANCE.

96. On the day fixed in the summons for the defendant to appear

Parties to appear on day fixed in summons for defendant to appear and answer.

and answer, the parties shall be in attendance at the Court-house in person or by their respective pleaders, and the suit shall then be heard, unless the hearing be adjourned to a future day fixed by the Court.

THE above section applies to M. S. C. C. and P. S. C. C.

97. If, on the day so fixed for the defendant to appear and answer,

Dismissal of suit where summons not served in consequence of plaintiff's failure to pay fee for issuing.

it be found that the summons has not been served upon him in consequence of the failure of the plaintiff to pay the court-fee leviable for such service, the Court may order that the suit be dismissed :

Provided that no such order shall be passed, although the summons

Proviso.

has not been served upon the defendant, if, on the day fixed for him to appear and answer, he attends in person or by agent, when he is allowed to appear by agent.

THE above section applies to M. S. C. C. and P. S. C. C.

98. If, on the day fixed for the defendant to appear and answer, or

If neither party appears, suit to be dismissed.

on any other subsequent day to which the hearing of the suit is adjourned, neither party appears, the suit shall be dismissed, unless the Judge, for reasons to be recorded under his hand, otherwise directs.

THE above section applies to M. S. C. C. and P. S. C. C.

99. Whenever a suit is dismissed under section 97 or section 98,

In such case plaintiff may bring fresh suit ;

the plaintiff may (subject to the law of limitation) bring a fresh suit ; or if, within the period of thirty days from the date of the order dismissing the suit, he satisfies the Court that there was a sufficient excuse for his not paying the court-fee required within the time allowed for the service of the

or Court may restore suit to its file.

summons, or for his non-appearance, as the case may be, the Court shall pass an order to set aside the dismissal, and appoint a day for proceeding with the suit.

THE above section applies to M. S. C. C. and P. S. C. C.

99A. If, after a summons has, whether before or after the first day

Dismissal of suit where plaintiff, after summons returned unserved, fails for a year to apply for fresh summons.

of June, 1882, been issued to the defendant, or to one of several defendants, and returned unserved, the plaintiff fails for a period of one year from such return to apply for the issue of a fresh summons, and to satisfy the Court that he has used his best endeavours to discover the residence of the defendant who has not been served, or that such defendant is avoiding service of process, the Court may dismiss the suit as against such defendant.

In such case the plaintiff may (subject to the law of limitation) bring a fresh suit.

THE above section applies to M. S. C. C. and P. S. C. C.

Procedure if only plaintiff appears,

when summons duly served,

(b) if it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant :

(c) if it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant.

If it is owing to the plaintiff's default that the summons was not served in sufficient time, the Court shall order him to pay the costs occasioned by such postponement.

THE above section applies to M. S. C. C. and P. S. C. C.

WHEN the plaintiff in a suit appears at the hearing, and the defendant does not appear, the proper procedure to follow is that prescribed by Act X. of 1877, s. 100, whether the defendant has been summoned only to appear and answer the claim, or has, in addition, been summoned to attend and give evidence.—Tarruck Nath Mullick v. Jeamat Nosya, I. L. R., 5 Cal. 353.

It is not necessary, before proceeding to hear and determine a suit *ex parte* under Act X. of 1877, s. 100, that all the process prescribed by law for compelling the attendance of the defendant as a witness should be exhausted. It is sufficient that due service of the summons upon the defendant is proved. If such proof is not given, the courses to be adopted are one or other of those mentioned in clauses b and c of s. 100 according to the circumstances of the case.—Tarruck Nath Mullick v. Jeamat Nosya, I. L. R., 5 Cal. 353.

THE plaintiff sued, under s. 3, clause w, of Act XVII. of 1877, for money due on a bond, dated the 8th September 1877. The defendant, though duly summoned, did not appear on the day fixed in the summons, which was for the final disposal of the suit. The Court, therefore, proceeded with it *ex parte*. The defendant, being subsequently summoned and examined as a witness under s. 7 of the Act, admitted the bond sued upon, but pleaded part-payment of the plaintiff's claim. He then applied to the Court that his witnesses should be summoned, and that their evidence be taken in support of his allegation. The Subordinate Judge was of opinion that he (defendant) was not entitled to offer the evidence. On his referring the case to the High Court : Held that it was his duty to summon the witnesses named by the defendant.—Duli Chand (Plaintiff) v. Dhondi (Defendant), I. L. R., 5 Bom. 184.

101. If the Court has adjourned the hearing of the suit *ex parte*,

Procedure where defendant appears on day of adjourned hearing, and assigns good cause for previous non-appearance.

and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit, as if he had appeared on the day fixed for his appearance.

THE above section applies to M. S. C. C. and P. S. C. C.

DEFENDANTS who put in no appearance at the original hearing, and who have subsequently been refused leave to appear and defend, are at liberty, where an *ex-parte* decree has been passed against them, to appeal to a higher Court, without

previously taking any steps to have the *ex-parte* decree set aside under s. 108 of Act X. of 1877.—*Ashruffunnissa and another (Defendants) v. Lehareaux (Plaintiff)*, I. L. R., 8 Cal. 272.

THE plaintiff sued, under s. 3, clause *w*, of Act XVII. of 1877, for money due on a bond, dated the 8th September 1877. The defendant, though duly summoned, did not appear on the day fixed in the summons, which was for the final disposal of the suit. The Court, therefore, proceeded with it *ex parte*. The defendant, being subsequently summoned and examined as a witness under s. 7 of the Act, admitted the bond sued upon, but pleaded part-payment of the plaintiff's claim. He then applied to the Court that his witnesses should be summoned, and that their evidence be taken in support of his allegation. The Subordinate Judge was of opinion that he (defendant) was not entitled to offer the evidence. On his referring the case to the High Court: *Held* that it was his duty to summon the witnesses named by the defendant.—*Duli Chand (Plaintiff) v. Dhondi (Defendant)*, I. L. R., 5 Bom. 184.

102. If the defendant appears, and the plaintiff does not appear, Procedure where defendant only appears. the Court shall dismiss the suit, unless the defendant admits the claim, or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

THE above section applies to M. S. C. C. and P. S. C. C.

IN A suit, issues having been settled, the final hearing of the suit was adjourned to a fixed date for final disposal. On that date plaintiff did not appear, and the suit was dismissed. *Held* that, as this was not a case which had been adjourned in favour of either party to enable him to "produce his proofs, or cause the attendance of his witnesses," the order was not one which could properly be made.—*Ryall v. Sherman*, I. L. R., 1 Mad. 287.

103. When a suit is wholly or partially dismissed under section 102, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action.† But he may apply for an order to set the dismissal aside; and, if it be proved that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall set aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

No order shall be made under this section unless the plaintiff has served the defendant with notice in writing of his application.

THE above section applies to M. S. C. C. and P. S. C. C.

104. If, on the day fixed for the hearing of a suit against a defendant residing out of British India, who has no agent empowered to accept service of summons, or on any day to which the hearing has been adjourned, the defendant does not appear, the plaintiff may apply to the Court for permission to proceed with his suit, and the Court may direct that the plaintiff be at liberty to proceed with his suit in such manner and subject to such conditions as the Court thinks fit.

THE above section applies to M. S. C. C. and P. S. C. C.

105. If there be more plaintiffs than one, and one or more of them

Procedure in case of non-attendance of one or more of several plaintiffs. appear, and the others do not appear, the Court may, at the instance of the plaintiff or plaintiffs appearing, permit the suit to proceed in the same way as if all the plaintiffs had appeared, and pass such order as it thinks fit.

THE above section applies to M. S. C. C. and P. S. C. C.

106. If there be more defendants than one, and one or more of

Procedure in case of non-attendance of one or more of several defendants. them appear, and the others do not appear, the suit shall proceed, and the Court shall, at the time of passing judgment, make such order as it thinks fit with respect to the defendants who do not appear.

THE above section applies to M. S. C. C. and P. S. C. C.

107. If a plaintiff or defendant, who has been ordered to appear in

Consequence of non-attendance, without sufficient cause shewn, of party ordered to appear in person. person under the provisions of section 66 or section 436, does not appear in person, or shew sufficient cause to the satisfaction of the Court for failing so to appear, he shall be subject to all the provisions of the foregoing sections applicable to plaintiffs and defendants, respectively, who do not appear.

THE above section applies to M. S. C. C. and P. S. C. C.

Of setting aside Decrees ex parte.

108. In any case in which a decree is passed *ex parte* against a de-

Setting aside decree *ex parte* against defendant. fendant, he may apply to the Court by which the decree was made for an order to set it aside;

and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall pass an order to set aside the decree upon such terms as to costs, payment into Court, or otherwise, as it thinks fit, and shall appoint a day for proceeding with the suit.

THE above section applies to M. S. C. C. and P. S. C. C.

UNDER s. 540 of the Civil Procedure Code an appeal lies from decrees passed *ex parte*. If a defendant appears at the first hearing, and files a written statement, he should not be placed *ex parte*.—Anantharāma Patter (Second Defendant), Appellant, v. Madhava Paniker (Plaintiff's Representative), Respondent, I. L. R., 3 Mad. 264.

DEFENDANTS who put in no appearance at the original hearing, and who have subsequently been refused leave to appear and defend, are at liberty, where an *ex-parte* decree has been passed against them, to appeal to a higher Court, without previously taking any steps to have the *ex-parte* decree set aside under s. 108 of Act X. of 1877.—Ashruffunnissa and another (Defendants) v. Lehareaux (Plaintiff), I. L. R., 8 Cal. 272.

No decree to be set aside without notice to opposite party.

109. No decree shall be set aside on any such application as aforesaid, unless notice thereof in writing has been served on the opposite party.

THE above section applies to M. S. C. C. and P. S. C. C.

CHAPTER VIII.

OF WRITTEN STATEMENTS AND SET-OFF.

110. The parties may, at any time before or at the first hearing of the suit, tender written statements of their respective cases, and the Court shall receive such statements and place them on the record.

Written statements.

THIS section contemplates that a defendant shall, in his written statement, set forth the case he intends to make at the trial.—*Chová Kára v. Isabin Khalifa*, I. L. R., 1 Bom. 209.

A SUPPLEMENTAL written statement cannot be filed after the parties have entered upon their case at the hearing.—*Munchershaw Bezonji v. The New Dhurumsey Spinning and Weaving Company*, I. L. R., 4 Bom. 576.

A WRITTEN statement of his case, tendered by a party to a suit at any time before or at the first hearing of the suit, is not liable to any court-fee, and may be written on plain paper (s. 110 of Act X. of 1877). A written statement called for by the Court after the first hearing is also exempt from stamp-duty (s. 19 of Act VII. of 1870).—*Nagu (Plaintiff) v. Yeknath (Defendant)*, I. L. R., 5 Bom. 400.

111. If in a suit for the recovery of money the defendant claims to

Particulars of set-off to be set-off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, and if in such claim of the defendant against the plaintiff both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the Court, tender a written statement containing the particulars of the debt sought to be set-off.

The Court shall thereupon inquire into the same, and if it finds that the case fulfils the requirements of the

Inquiry.

former part of this section, and that the amount claimed to be set-off does not exceed the pecuniary limits of its jurisdiction, the Court shall set-off the one debt against the other.

Such set-off shall have the same effect as a plaint in a cross-suit, so as to enable the Court to pronounce a final

Effect of set-off.

judgment in the same suit, both on the original and on the cross claim; but it shall not affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.

Illustrations.

(a.) A bequeaths Rs. 2,000 to B, and appoints C his executor and residuary legatee. B dies, and D takes out administration to B's effects. C pays Rs. 1,000 as surety for D. Then D sues C for the legacy. C cannot set-off the debt of Rs. 1,000 against the legacy, for neither C nor D fills the same character with respect to the legacy as they fill with respect to the payment of the Rs. 1,000.

(b.) A dies intestate and in debt to B. C takes out administration to A's effects, and B buys part of the effects from C. In a suit for the purchase-money by C against B, the latter cannot set-off the debt against the price, for C fills two different characters, one as the vendor to B, in which he sues B, and the other as representative to A.

(c.) A sues B on a bill of exchange. B alleges that A has wrongfully neglected to insure B's goods, and is liable to him in compensation, which he claims to set-off. The amount, not being ascertained, cannot be set-off.

(d.) A sues B on a bill of exchange for Rs. 500. B holds a judgment against A for Rs. 1,000. The two claims, being both definite pecuniary demands, may be set-off.

(e.) A sues B for compensation on account of a trespass. B holds a promissory note for Rs. 1,000 from A, and claims to set-off that amount against any sum that A may recover in the suit. B may do so, for as soon as A recovers, both sums are definite pecuniary demands.

(f.) A and B sue C for Rs. 1,000. C cannot set-off a debt due to him by A alone.

(g.) A sues B and C for Rs. 1,000. B cannot set-off a debt due to him alone by A.

(h.) A owes the partnership-firm of B and C Rs. 1,000. B dies leaving C surviving. A sues C for a debt of Rs. 1,500 due in his separate character. C may set-off the debt of Rs. 1,000.

THE above section applies to M. S. C. C. and P. S. C. C.

THE provisions of Act X. of 1877 do not give the right to set-off claims for unliquidated damages, but that Act does not take away any right of set-off, whether legal or equitable, which parties to a suit would have independently of its provisions.—*Kishorchand Champálál v. Madhowji Visráj*, I. L. R., 4 Bom. 407.

THE usufructuary mortgagee of certain lands sued the mortgagor for the money due under the mortgage. The mortgagor alleged that the mortgagee had committed waste, and was liable to him for compensation, which he claimed to set-off: *Held* that, under Act X. of 1877, s. 111, the amount of such compensation could not be set-off.—*Raghu Nath Das v. Ashraf Hosain Khan*, I. L. R., 2 All. 252.

WHERE, in a suit for the price of goods sold and delivered, the defendant admitted that there was a sum of Rs. 1,159-12 due by him to the plaintiff, but sought to set-off the sum of Rs. 972 as damages sustained by him by reason of the non-delivery of some of the goods contracted for: *Held* that as the claim of the defendant against the plaintiff was connected with the same transaction, and arose out of one and the same contract, as that in respect of which the plaintiff's suit was brought, and as the amount of the defendant's claim was capable of being immediately ascertained, the defendant might set-off his claim.—*Kishorchand Champálál v. Madhowji Visráj*, I. L. R., 4 Bom. 407.

No written statement to be received after first hearing.

112. Except as provided in the last preceding section, no written statement shall be received after the first hearing of the suit:

Provided that the Court may, at any time, require a written statement, or additional written statement, from any of the parties, and fix a time for presenting the same:

Provisoos.

Provided also that a written statement, or an additional written statement, may, with the permission of the Court, be received at any time for the purpose of answering written statements so required and presented.

113. If any party from whom a written statement is so required

Procedure when party fails to present written statement called for by Court.

fails to present the same within the time fixed by the Court, the Court may pass a decree against him, or make such order in relation to the suit as it thinks fit.

114. Written statements shall be as brief as the nature of the case

Frame of written statements.

admits, and shall not be argumentative, but shall be confined as much as possible to a simple narrative of the facts which the party by whom or on whose behalf the written statement is made believes to be material to the case, and which he either admits or believes he will be able to prove.

Every such statement shall be divided into paragraphs, numbered consecutively, and each paragraph containing as nearly as may be a separate allegation.

THE above section applies to P. S. C. C.

115. Written statements shall be signed and verified in the manner

hereinbefore provided for signing and verifying
 Written statements to be signed and verified. complaints, and no written statement shall be received unless it be so signed and verified.

THE above section applies to P. S. C. C.

116. If it appears to the Court that any written statement, whether

called for by the Court or spontaneously tendered, is argumentative or prolix, or contains
 Power of Court as to argumentative, prolix, or irrelevant written statements. matter irrelevant to the suit, the Court may amend it then and there, or may, by an order to be endorsed thereon, reject the same, or return it to the party by whom it was made for amendment within a time to be fixed by the Court, imposing such terms as to costs or otherwise as the Court thinks fit.

When any amendment is made under this section, the Judge shall attest it by his signature.
 Attestation of amendments.

When a statement has been rejected under this section, the party

making it shall not present another written statement, unless it be expressly called for or allowed by the Court.
 Effect of rejection.

THE above section applies to P. S. C. C.

CHAPTER IX.

OF THE EXAMINATION OF THE PARTIES BY THE COURT.

117. At the first hearing of the suit, the Court shall ascertain from

the defendant or his pleader whether he admits or denies the allegations of fact made in the
 Ascertainment whether allegations in plaint and written statements admitted or denied. plaint, and shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the written statement (if any) of the opposite party, and as are not, expressly or by necessary implication, admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.

THE above section applies to M. S. C. C. and P. S. C. C.

118. At the first hearing of the suit, or at any subsequent hearing,

any party appearing in person or present in Court, or any person able to answer any material questions relating to the suit by whom
 Oral examination of party or companion of himself or his pleader. such party or his pleader is accompanied, may be examined orally by the Court; and the Court may, if it thinks fit, put, in the course of such examination, questions suggested by either party.

THE above section applies to M. S. C. C. and P. S. C. C.

Substance of examination
to be written.

119. The substance of the examination shall be reduced to writing by the Judge, and shall form part of the record.

120. If the pleader of any party who appears by a pleader refuses or is unable to answer any material question relating to the suit which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the suit to a future day, and direct that such party shall appear in person on such day.

If such party fails without lawful excuse to appear in person on the day so appointed, the Court may pass a decree against him, or make such order in relation to the suit as it thinks fit.

THE above section applies to M. S. C. C. and P. S. C. C.

CHAPTER X.

OF DISCOVERY, AND OF THE ADMISSION, INSPECTION, PRODUCTION, IMPOUNDING, AND RETURN OF DOCUMENTS.

121. Any party may, at any time, by leave of the Court, deliver, through the Court, interrogatories in writing for the examination of the opposite party, or where there are more opposite parties than one, any one or more of such parties, with a note at the foot thereof stating which of such interrogatories each of such persons is required to answer:

Provided that no party shall deliver more than one set of interrogatories to the same person without the permission of the Court, and that no defendant shall deliver interrogatories for the examination of the plaintiff unless such defendant has previously tendered a written statement, and such statement has been received and placed on the record.

THE above section applies to M. S. C. C.

ACT X. of 1877, s. 121, contemplates (1) leave to interrogate and (2) the service of the interrogatories through the Court. It is the duty of the Court under that section to determine whether the applicant should be allowed to interrogate the other side, but not to determine at that stage what questions the party interrogated should be compelled to answer.—*Sham Kishore Mundle v. Shoshibhoosun Biswas*, I. L. R., 5 Cal. 707.

122. Interrogatories delivered under section 121 shall be served on the pleader (if any) of the party interrogated, or in the manner hereinbefore provided for the service of summons, and the provisions of sections 79, 80, 81, and 82, shall, in the latter case, apply, so far as may be practicable.

THE above section applies to M. S. C. C.

123. The Court, in adjusting the costs of the suit, shall, at the instance of any party, inquire or cause inquiry to be made into the propriety of delivering such interrogatories; and if it thinks that such interrogatories have

been delivered unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be borne by the party in fault.

THE above section applies to M. S. C. C.

124. If any party to a suit be a body corporate or a joint-stock company, whether incorporated or not, or any other body of persons empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply to the Court for an order allowing him to deliver interrogatories to any member or officer of such corporation, company, or body, and an order may be made accordingly.

THE above section applies to M. S. C. C.

125. Any party called upon to answer interrogatories, whether by himself or by any such member or officer, may refuse to answer any interrogatory on the ground that it is irrelevant, or is not put *bond fide* for the purposes of the suit, or that the matter inquired after is not sufficiently material at that stage of the suit, or on any other like ground.

THE above section applies to M. S. C. C.

126. Interrogatories shall be answered by affidavit to be filed in Court within ten days from the service thereof, or within such further time as the Judge may allow.

THE above section applies to M. S. C. C.

127. If any person interrogated omits or refuses to answer, or answers insufficiently, any interrogatory, the party interrogating may apply to the Court for an order requiring him to answer or to answer further, as the case may be. And an order may be made requiring him to answer or to answer further either by affidavit or by *viva voce* examination, as the Judge may direct: Provided that the Judge shall not require an answer to any interrogatory which in his opinion need not have been answered under section 125.

THE above section applies to M. S. C. C.

128. Either party may, by a notice through the Court, within a reasonable time not less than ten days before the hearing, require the other party to admit (saving all just exceptions to the admissibility of such document in evidence) the genuineness of any document material to the suit.

The admission shall also be made in writing signed by the other party or his pleader and filed in Court.

If such notice be not given, no costs of proving such document shall be allowed, unless the Judge otherwise orders.

If such notice is not complied with within four days after its being served, and the Judge thinks it reasonable that the admission should have been made, the party refusing shall bear the expense of proving such document, whatever may be the result of the suit.

THE above section applies to M. S. C. C.

129. The Court may, at any time during the pendency therein of any suit, order any party to the suit to declare by affidavit all the documents which are or have been in his possession or power relating to any matter in question in the suit, and any party to the suit may, at any time before the first hearing, apply to the Court for a like order.

Every affidavit made under this section shall specify which (if any) of the documents therein mentioned the declarant objects to produce, together with the grounds of such objection.

THE above section applies to M. S. C. C.

130. The Court may, at any time during the pendency therein of any suit, order the production by any party thereto of such of the documents in his possession or power relating to any matter in question in such suit or proceeding as the Court thinks right; and the Court may deal with such documents when produced in such manner as appears just.

THE above section applies to M. S. C. C.

UNDER Act X. of 1877, s. 130, a Judge has no discretion to refuse to allow inspection of documents relating to matters in question in a suit, provided they are not privileged.—Wallace v. Jefferson, I. L. R., 2 Bom. 453.

131. Any party to a suit may, at any time before or at the hearing thereof, give notice through the Court to any other party to produce any specified document for the inspection of the party giving such notice or of his pleader, and to permit such party or pleader to take copies thereof.

No party failing to comply with such notice shall afterwards be at liberty to put any such document in evidence on his behalf in such suit, unless he satisfies the Court that such document relates only to his own title, or that he had some other and sufficient cause for not complying with such notice.

THE above section applies to M. S. C. C.

132. The party to whom such notice is given shall, within ten days from the receipt thereof, deliver through the Court to the party giving the same a notice stating a time within three days from such delivery at which the documents, or such of them as he does not object to produce, may be inspected at his pleader's office or some other convenient place, and stating which (if any) of the documents he objects to produce, and on what grounds.

THE above section applies to M. S. C. C.

133. If any party served with notice under section 131 omits to give notice under section 132 of the time for inspection, or objects to give inspection, or names an inconvenient place for inspection, the party desiring it may apply to the Court for an order of inspection.

THE above section applies to M. S. C. C.

134. Except in the case of documents referred to in the plaint, written statement, or affidavit of the party against whom the application is made, or disclosed in his affidavit of documents, such application shall be founded upon an affidavit, shewing (a) of what documents inspection is sought, (b) that the party applying is entitled to inspect them, and (c) that they are in the possession or power of the party against whom the application is made.

THE above section applies to M. S. C. C.

135. If the party from whom discovery of any kind or inspection is sought objects to the same or any part thereof, and if the Court is satisfied that the right to such discovery or inspection depends on the determination of any issue or question in dispute in the suit, or that, for any other reason, it is desirable that any such issue or question should be determined before deciding upon the right to the discovery or inspection, the Court may order that the issue or question be determined first, and reserve the question as to the discovery or inspection.

THE above section applies to M. S. C. C.

136. If any party fails to comply with any order under this chapter, to answer interrogatories, or for discovery, production, or inspection, which has been duly served, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence (if any) struck out, and to be placed in the same position as if he had not appeared and answered;

and the party interrogating or seeking discovery, production, or inspection, may apply to the Court for an order to that effect, and the Court may make such order accordingly.

Any party failing to comply with any order under this chapter, to answer interrogatories, or for discovery, production, or inspection, which has been served personally upon him, shall also be deemed guilty of an offence under section 188 of the Indian Penal Code.

THE above section applies to M. S. C. C.

THE powers given to the Court by Act X. of 1877, s. 136, should not be exercised except in extreme cases.—*Sham Kishore Mundle v. Shoshiboosun Biswas*, I. L. R., 5 Cal. 707.

137. The Court may of its own accord, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other Court, the record of any other suit or proceeding, and inspect the same.

Every application made under this section shall (unless the Court otherwise directs) be supported by an affidavit of the applicant or his pleader, shewing how the record is material to the suit in which the application is made, and that the applicant cannot, without unreasonable delay or expense, obtain a duly authenticated copy of the record, or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

Nothing contained in this section shall be deemed to enable the Court to use in evidence any document which, under the Indian Evidence Act, 1872, would be inadmissible in the suit.

THE above section applies to M. S. C. C. and (except para. 2) to P. S. C. C.

IN ALL cases in which parties apply for a summons to compel the attendance of witnesses, or a summons to produce documents, or apply to have a document sent for under s. 137 of the Code of Civil Procedure, the Court ought not to refuse such application, merely because, in its opinion, the witnesses cannot be present, or the documents cannot be produced, before the termination of the trial.—*Krishna Churn Baisack v. Protap Chunder Surma*, I. L. R., 7 Cal. 560.

138. The parties or their pleaders shall bring with them, and have in readiness at the first hearing of the suit, to be produced when called for by the Court, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court at any time before such hearing has ordered to be produced.

THE above section applies to M. S. C. C. and P. S. C. C.

139. No documentary evidence in the possession or power of any party, which should have been, but has not been, produced in accordance with the requirements of section 138, shall be received at any subsequent stage of the proceedings, unless good cause be shown to the satisfaction of the Court for the non-production thereof. And the Judge receiving any such evidence shall record his reasons for so doing.

THE above section applies to M. S. C. C.

140. The Court shall receive the documents respectively produced by the parties at the first hearing, provided that the documents produced by each party be accompanied by an accurate list thereof prepared in such form as the High Court may from time to time direct.

The Court may, any stage of the suit, reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

THE above section applies to M. S. C. C. and (except the proviso and the last six words) to P. S. C. C.

141. No document shall be placed on the record unless it has been proved or admitted in accordance with the law of evidence for the time being in force. Every document so proved or admitted shall be endorsed with the number and title of the suit, the name of the person producing it, and the date on which

it was produced. The Judge shall then endorse with his own hand a statement that it was proved against or admitted by (as the case may be) the person against whom it is used. The document shall then be filed as part of record :

Provided that, if the document be an entry in a shop-book or other book, the party on whose behalf such book is produced may furnish a copy of the entry, which may be endorsed as aforesaid, and shall be filed as part of the record, and the Court shall mark the entry, and shall then return the book to the person producing it.

All documents produced at the first hearing, and not so proved or admitted, shall be returned to the parties respectively producing them.

THE above section applies to M. S. C. C. and (except the third sentence) to P. S. C. C.

142. When a document so proved or admitted is relied on as evidence by either party, but the Court considers it inadmissible, it shall be further endorsed with the addition of the word "rejected," and the endorsement shall be signed by the Judge.

and returned.

The document shall then be returned to the party who produced it.

THE above section applies to M. S. C. C. and P. S. C. C.

143. Notwithstanding anything contained in sections 62, 141, and 142, the Court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of an officer of the Court, for such period and subject to such conditions as the Court thinks fit.

THE above section applies to M. S. C. C. and P. S. C. C.

144. In suits in which an appeal is not allowed, when the suit has been disposed of, and in suits in which an appeal is allowed, when the time for preferring an appeal from the decree has elapsed, or, if an appeal has been preferred, then after the appeal has been disposed of, any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit, and placed on the record, shall, unless the document is impounded under section 143, be entitled to receive back the same :

Provided that a document may be returned at any time before either of such events, if the person applying for such return delivers to the proper officer a certified copy of such document to be substituted for the original :

Provided also that no document shall be returned which, by force of the decree, has become void or useless.

On the return of a document which has been admitted in evidence, a receipt shall be given by the party receiving it, in a receipt-book to be kept for the purpose.

THE above section applies to M. S. C. C.

Provisions as to documents applied to material objects.

145. The provisions herein contained as to documents shall, so far as may be, apply to all other material objects producible as evidence.

THE above section applies to M. S. C. C. and P. S. C. C.

CHAPTER XI.

OF THE SETTLEMENT OF ISSUES.

146. Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

Framing of issues.

Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue.

Each material proposition affirmed by one party and denied by the other must form the subject of a distinct issue.

Issues are of two kinds: (a) issues of fact, (b) issues of law.

At the first hearing of the suit, the Court shall, after reading the plaint and the written statements (if any), and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to the Court to depend.

When issues both of law and of fact arise in the same suit, and the Court is of opinion that the case may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.

Nothing in this section requires the Court to frame and record issues when the defendant at the first hearing of the suit makes no defence.

Allegations from which issues may be framed.

147. The Court may frame the issues from all or any of the following materials—

(a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties or persons;

(b) allegations made in the plaint or in the written statements (if any) tendered in the suit, or in answer to interrogatories delivered in the suit;

(c) the contents of documents produced by either party.

148. If the Court be of opinion that the issues cannot be correctly

Court may examine witnesses or documents before framing issues.

framed without the examination of some person not before the Court, or without the inspection of some document not produced in the suit, it may adjourn the framing of the issues to a future day, to be fixed by the Court, and may (subject to the rules contained in the Indian Evidence Act) compel the attendance of any person or the production of any document by the person in whose hands it may be, by summons or other process.

149. The Court may, at any time before passing a decree, amend

Power to amend, add, and strike out issues.

the issues or frame additional issues on such terms as it thinks fit, and all such amendments

or additional issues as may be necessary for determining the controversy between the parties shall be so made or framed.

The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.

WHERE no injustice would be done to either party, the Courts, in the exercise of their discretion, under special circumstances, may allow issues to be raised upon matter which does not strictly come within the proper scope of the pleadings. The power to allow such amendments is given by the first part of Act X. of 1877, s. 149, corresponding with the first part of Act VIII. of 1859, s. 141.—*Nehora Roy v. Radha Pershad Singh*, I. L. R., 5 Cal. 64.

150. When the parties to a suit are agreed as to the question of

Questions of fact or law may by agreement be stated in form of issue. fact or of law to be decided between them, they may state the same in the form of an issue, and enter into an agreement in writing—

(a) that upon the finding of the Court in the affirmative or the negative of such issue, a sum of money specified in the agreement, or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, or that one of them be declared entitled to some right or subject to some liability specified in the agreement,

(b) that upon such finding some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct, or

(c) that upon such finding one or more of the parties shall do or abstain from doing some particular act, specified in the agreement, and relating to the matter in dispute.

THE above section applies to P. S. C. C.

Court, if satisfied that agreement was executed in good faith, may pronounce judgment.

151. If the Court be satisfied, after making such inquiry as it deems proper,

(a) that the agreement was duly executed by the parties,

(b) that they have a substantial interest in the decision of such question as aforesaid, and

(c) that the same is fit to be tried and decided,

it may proceed to record and try the issue, and state its finding or opinion thereon in the same manner as if the issue had been framed by the Court;

and may, upon the finding or decision on such issue, pronounce judgment according to the terms of the agreement;

and upon the judgment so given, decree shall follow, and may be executed in the same way as if the judgment had been pronounced in a contested suit.

THE above section applies to P. S. C. C.

CHAPTER XII.

DISPOSAL OF THE SUIT AT THE FIRST HEARING.

152. If, at the first hearing of a suit, it appears that the parties

If parties not at issue on any question of law or fact. are not at issue on any question of law or of fact, the Court may at once pronounce judgment.

THE above section applies to P. S. C. C.

153. Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or fact, the Court may at once pronounce judgment for or against such defendant, and the suit shall proceed only against the other defendants.

If one of several defendants be not at issue with plaintiff.

THE above section applies to P. S. C. C

154. When the parties are at issue on some question of law or of fact, and issues have been framed by the Court as hereinbefore provided, if the Court be satisfied that no further argument or evidence than the parties can at once supply is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issues;

and, if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit:

Provided that, where the summons has been issued for the settlement of issues only, the parties or their pleaders are present, and none of them object.

If the finding is not sufficient for the decision, the Court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence, or for such further argument, as the case requires.

155. If the summons has been issued for the final disposal of the suit, and either party fails, without sufficient cause, to produce the evidence on which he relies, the Court may at once pronounce judgment,

or may, if it thinks fit, after framing and recording issues under section 146, adjourn the suit for the production of such evidence as may be necessary to its decision upon such issues.

THE first paragraph of the above section applies to M. S. C. C.

CHAPTER XIII.

OF ADJOURNMENTS.

156. The Court may, if sufficient cause be shown, at any stage of the suit grant time to the parties or to any of them, and may, from time to time, adjourn the hearing of the suit.

Court may grant time, and adjourn hearing.

In all such cases the Court shall fix a day for the further hearing of the suit, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment:

Costs of adjournment.

Provided that, when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing to be necessary for reasons to be recorded by the Judge with his own hand..

THE above section applies to M. S. C. C. and P. S. C. C.

A COURT ought not to adjourn a case for the production of a document, much less (when it does so) to allow witnesses and several of the parties who were interested in the result to be recalled, and to add to and vary the evidence which they had previously given, in order to prove a case which they had not set up.—(P. C.) 3 P. C. R. 304 (26 W. R. 55 ; L. R. 3 I. A. 259).

157. If, on any day to which the hearing of the suit is adjourned,

Procedure if parties fail the parties or any of them fail to appear, the to appear on day fixed. Court may proceed to dispose of the suit in one of the modes directed in that behalf by Chapter VII., or make such other order as it thinks fit.

THE above section applies to M. S. C. C. and P. S. C. C.

158. If any party to a suit to whom time has been granted fails to

Court may proceed notwithstanding either party fails to produce evidence, &c. produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default, proceed to decide the suit forthwith.

THE above section applies to M. S. C. C. and P. S. C. C.

THE Code of Civil Procedure does not authorize the dismissal of a suit on refusal or failure of a party to deposit the amount ordered by the Court as remuneration to a Commissioner appointed under s. 394 to examine accounts. The remuneration of a Commissioner appointed by the Court to examine accounts should, as a rule, be a definite amount, and not at a monthly allowance.—*Rāgava Chariār* (Plaintiff), Appellant, v. *Védānta Chariār* and others (Defendants), Respondents, I. L. R., 3 Mad. 259.

CHAPTER XIV.

OF THE SUMMONING AND ATTENDANCE OF WITNESSES.

159. The parties may, after the summons has been delivered for

Summons to attend to give evidence or produce documents. service on the defendant, whether it be for the settlement of issues only, or for the final disposal of the suit, obtain, on application to the Court or to such officer as it appoints in this behalf, before the day fixed for such settlement or disposal, as the case may be, summonses to persons whose attendance is required either to give evidence or to produce documents.

THE above section applies to M. S. C. C. and P. S. C. C.

160. The party applying for a summons shall, before the summons

Expenses of witnesses to be paid into Court on applying for summons. is granted, and within a period to be fixed by the Court, pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned, in passing to and from the Court in which he is required to attend, and for one day's attendance.

If the Court be subordinate to a High Court, regard shall be had, in fixing the scale of such expenses, to the rules (if any) laid down by competent authority.

Scale of expenses.

THE above section applies to M. S. C. C. and P. S. C. C.

161. The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

Tender of expenses to witness.

THE above section applies to M. S. C. C. and P. S. C. C.

162. If it appear to the Court or to such officer as it appoints in this behalf that the sum paid into Court is not sufficient to cover such expenses, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account; and, in case of default in payment, may order such sum to be levied by attachment and sale of the moveable property of the party obtaining the summons; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

If it be necessary to detain the person summoned for a longer period than one day, the Court may, from time to time, order the party at whose instance he was summoned to pay into Court such sum as is sufficient to defray the expenses of his detention for such further period, and, in default of such deposit being made, may order such sum to be levied by attachment and sale of the moveable property of the party at whose instance he was summoned; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

Expenses if witness detained more than one day.

THE above section applies to M. S. C. C. and P. S. C. C.

163. Every summons for the attendance of a person to give evidence or produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document which the person summoned is called on to produce shall be described in the summons with reasonable accuracy.

Time, place, and purpose of attendance to be specified in summons.

THE above section applies to M. S. C. C. and P. S. C. C.

164. Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons, if he cause such document to be produced instead of attending personally to produce the same.

Summons to produce document.

THE above section applies to M. S. C. C. and P. S. C. C.

165. Any person present in Court may be required by the Court to give evidence or to produce any document present in Court to give then and there in his actual possession or evidence. power.

THE above section applies to M. S. C. C. and P. S. C. C.

166. Every summons to a person to give evidence or produce a document shall be served as nearly as may be in manner hereinbefore prescribed for the service of summons on the defendant; and the rules contained in Chapter VI. as to proof of service shall apply in the case of all summonses served under this section.

THE above section applies to M. S. C. C. and P. S. C. C.

167. The service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required.

THE above section applies to M. S. C. C. and P. S. C. C.

168. If the serving-officer certify to the Court that the summons for the attendance of a person, either to give evidence or to produce a document, cannot be served, the Court shall examine the serving-officer on oath touching the non-service:

and upon being satisfied that such evidence or production is material, and that the person for whose attendance the summons has been issued is absconding or keeping out of the way for the purpose of avoiding the service of the summons, may issue a proclamation requiring him to attend to give evidence, or produce the document, at a time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door of the house in which he ordinarily resides.

If he does not attend at the time and place named in such proclamation, the Court may, in its discretion, at the instance of the party on whose application the summons was issued, make an order for the attachment of the property of the person whose attendance is required, to such amount as the Court thinks fit, not exceeding the amount of the costs of attachment and of the fine which may be imposed under section 170:

Provided that no Court of Small Causes shall make an order for the attachment of immoveable property.

THE above section applies to M. S. C. C.

169. If, on the attachment of his property, such person appears and satisfies the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment as it thinks fit.

THE above section applies to M. S. C. C.

170. If such person does not appear, or, appearing, fails to satisfy the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court may impose upon him such fine, not exceeding five hundred rupees, as the Court thinks fit, having regard to his condition in life and all the circumstances of the case, and may order the property attached, or any part thereof, to be sold for the purpose of satisfying all costs incurred in consequence of such attachment, together with the amount of the said fine (if any):

Provided that, if the person whose attendance is required pays into Court the costs and fine as aforesaid, the Court shall order the property to be released from attachment.

THE above section applies to M. S. C. C.

171. Subject to the rules of this Code as to attendance and appearance, and to the provisions of the Indian Evidence Act, 1872, if the Court at any time thinks it necessary to examine any person other than a party to the suit, and not named as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness, or require him to produce such document.

THE above section applies to M. S. C. C. and P. S. C. C.

172. Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit must attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document must either attend to produce it, or cause it to be produced, at such time and place.

THE above section applies to M. S. C. C. and P. S. C. C.

173. No person so summoned and attending shall depart unless and until (a) he has been examined or has produced the document and the Court has risen, or (b) he has obtained the Court's leave to depart.

THE above section applies to M. S. C. C. and P. S. C. C.

174. If any person on whom a summons to give evidence or produce a document has been served fails to comply with the summons, or if any person so summoned and attending departs in contravention of section 173, the Court may order him to be arrested and brought before the Court:

Provided that no such order shall be made when the Court has reason to believe that the person so failing had a lawful excuse for such failure.

When any person so brought before the Court fails to satisfy it that he had a lawful excuse for not complying with the summons, the Court may sentence him to fine not exceeding five hundred rupees,

Explanation.—Non-payment or non-tender of a sum sufficient to defray the expenses mentioned in section 160 shall be deemed a lawful excuse within the meaning of this section.

If any person so apprehended and brought before the Court cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and, on such bail or security being given, may release him.

THE above section applies to M. S. C. C. and P. S. C. C.

175. If any person so failing to comply with a summons absconds or keeps out of the way, so that he cannot be apprehended and brought before the Court, the provisions of sections 168, 169, and 170, shall, *mutatis mutandis*, apply.

THE above section applies to M. S. C. C.

176. No one shall be bound to attend in person to give evidence or to be examined in Court unless he resides—

- (a) within the local limits of its ordinary original jurisdiction, or
- (b) without such limits and at a place less than fifty or (where there is railway-communication for five-sixths of the distance between the place where he resides and the place where the Court is situate) two hundred miles distant from the Court-house.

THE above section applies to M. S. C. C. and P. S. C. C.

177. If any party to a suit present in Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document then and there in his actual possession or power, the Court may, in its discretion, either pass a decree against him, or make such order in relation to the suit as the Court thinks fit.

THE above section applies to M. S. C. C. and P. S. C. C.

178. Whenever any party to a suit is required to give evidence or to produce a document, the rules as to witnesses called on by Court. contained in this Code shall apply to him so far as they are applicable.

THE above section applies to M. S. C. C. and P. S. C. C.

FAILURE to comply with the provisions of ss. 182 and 183 of Act X. of 1877 (Civil Procedure Code) in a judicial proceeding is an informality which renders the deposition of an accused inadmissible in evidence on a charge of giving false evidence based on such deposition; and under s. 91 of Act I. of 1872 (Indian Evidence Act), no other evidence of such deposition is admissible.—In the matter of the petition of Mayadeb Gossami. The Empress v. Mayadeb Gossami, I. L. R., 6 Cal. 769.

CHAPTER XV.

OF THE HEARING OF THE SUIT AND EXAMINATION OF WITNESSES.

179. On the day fixed for the hearing of the suit, or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

Statement and production of evidence by party having right to begin.

Explanation.—The plaintiff has the right to begin, unless where

the defendant admits the facts alleged by the plaintiff, and contends that, either in point of law or on some additional facts alleged by the defendant, the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

Rules as to right to begin.

THE above section applies to M. S. C. C. and P. S. C. C.

Statement and production of evidence by other party.

180. The other party shall then state his case and produce his evidence (if any).

Reply by party beginning.

The party beginning is then entitled to reply.

Where there are several issues the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues, or reserve it by way of answer to the evidence produced by the other party. In the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.

THE above section applies to M. S. C. C. and P. S. C. C.

181. The evidence of the witnesses in attendance shall be taken orally in open Court in the presence, and under the personal direction and superintendence, of the Judge.

Witnesses to be examined in open Court.

THE above section applies to M. S. C. C. and P. S. C. C.

182. In cases in which an appeal is allowed, the evidence of each witness shall be taken down in writing, in the language of the Court, by or in the presence and under the personal direction and superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and, when completed, shall be read over in the presence of the Judge and of the witness, and also in the presence of the parties or their pleaders, and the Judge shall, if necessary, correct the same, and shall sign it.

How evidence shall be taken in appealable cases.

FAILURE to comply with the provisions of ss. 182 and 183 of Act X. of 1778 (Civil Procedure Code) in a judicial proceeding is an informality which renders the deposition of an accused inadmissible in evidence on a charge of giving false evidence based on such deposition; and under s. 91 of Act I. of 1872 (Indian Evidence Act), no other evidence of such deposition is admissible.—In the matter of the petition of Mayadeb Gossami. The Empress v. Mayadeb Gossami, I. L. R., 6 Cal. 762.

183. If the evidence is taken down under section 182 in a language different from that in which it was interpreted, given, and the witness does not understand the language in which it is taken down, the evidence as taken down in writing shall be interpreted to him in the language in which it was given.

FAILURE to comply with the provisions of ss. 182 and 183 of Act X. of 1877 (Civil Procedure Code) in a judicial proceeding is an informality which renders the deposition of an accused inadmissible in evidence on a charge of giving false evidence based on such deposition; and under s. 91 of Act I. of 1872 (Indian Evidence Act), no other evidence of such deposition is admissible.—In the matter of the petition of Mayadeb Gossami. *The Empress v. Mayadeb Gossami*, I. L. R., 6 Cal. 762.

184. In cases in which the evidence is not taken down in writing by the Judge, he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what each witness deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall form part of the record.

185. Where English is not the language of the Court, but all the parties to the suit who appear in person, and the pleaders of such as appear by pleaders, do not object to have such evidence as is given in English, taken down in English, the Judge may so take it down with his own hand.

186. The Court may, of its own motion, or on the application of any party or his pleader, take down, or cause to be taken down, any particular question and answer, or any objection to any question, if there appear any special reason for so doing.

187. If any question put to a witness be objected to by a party or his pleader, and the Court allows the same to be put, the Judge shall take down the question, the answer, the objection, and the name of the person making it, together with the decision of the Court thereon.

188. The Court may record such remarks as it thinks material respecting the demeanour of any witness while under examination.

189. In cases in which an appeal is not allowed, it shall not be necessary to take down the evidence of the witnesses in writing at length; but the Judge, as the examination of each witness proceeds, shall make a memorandum of the substance of what he deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall form part of the record.

The above section applies to M. S. C. C.

190. If the Judge be rendered unable to make a memorandum as above required by this chapter, he shall cause the reason of such inability to be recorded, and shall cause the memorandum to be made in writing from his dictation in open Court.

Every memorandum so made shall form part of the record.

THE above section applies to M. S. C. C.

191. Where the Judge taking down any evidence, or causing any memorandum to be made under this chapter, dies or is removed from the Court before the conclusion of the suit, his successor may, if he thinks fit, deal with such evidence or memorandum as if he himself had taken it down or caused it to be made.

Power to deal with evidence taken down by Judge removed before conclusion of suit.

THE above section applies to M. S. C. C.

192. If a witness be about to leave the jurisdiction of the Court, or if other sufficient cause be shown to the satisfaction of the Court why his evidence should be taken immediately, the Court may, upon the application of either party or of the witness, at any time after the institution of the suit, take the evidence of such witness in manner hereinbefore provided.

Where such evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient, of the day fixed for the examination, shall be given to the parties.

The evidence so taken shall be read over to the witness, and, if he admits it to be correct, shall be signed by him, and may then be read at any hearing of the suit.

THE above section applies to M. S. C. C. and P. S. C. C.

193. The Court may, at any stage of the suit, recall any witness Court may recall and who has been examined, and who has not de-examine witness. parted in accordance with section 173, and may (subject to the provisions of the Indian Evidence Act, 1872) put such questions to him as the Court thinks fit.

THE above section applies to M. S. C. C. and P. S. C. C.

CHAPTER XVI. OF AFFIDAVITS.

194. Any Court of first instance and any Appellate Court may, at any time, for sufficient reason, order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable :

Provided that where it appears to the Court that either party *bona fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

THE above section applies to P. S. C. C.

195. Upon any application evidence may be given by affidavit, but the Court may, at the instance of either party, order the attendance, for cross-examination, of the declarant.

Power to order attendance of declarant for cross-examination.

Such attendance shall be in Court, unless the declarant is exempted under this Code from personal appearance in Court, or the Court otherwise directs.

THE above section applies to P. S. C. C.

196. Affidavits shall be confined to such facts as the declarant is able of his own knowledge to prove, except on matters to which affidavits shall be confined. interlocutory applications, on which statements of his belief may be admitted, provided that reasonable grounds there- of be set forth.

The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party producing the same.

THE above section applies to P. S. C. C.

Oath of declarant by whom to be administered. **197.** In the case of any affidavit under this Code—

- (a) any Court or Magistrate, or
- (b) any officer whom a High Court may appoint in this behalf, or
- (c) any officer appointed by any other Court which the Local Government has generally or specially empowered in this behalf, may administer the oath of the declarant.

THE above section applies to P. S. C. C.

CHAPTER XVII.

OF JUDGMENT AND DECREE.

198. The Court, after the evidence has been duly taken, and the parties have been heard either in person or by Judgment when pronounced. their respective pleaders or recognized agents, shall pronounce judgment in open Court, either at once or on some future day, of which due notice shall be given to the parties or their pleaders.

THE above section applies to M. S. C. C. and P. S. C. C.

Power to pronounce judgment written by Judge's predecessor. **199.** A Judge may pronounce a judgment written by his predecessor, but not pronounced.

THE above section applies to M. S. C. C. and P. S. C. C.

Language of judgment. **200.** The judgment shall be written in the language of the Court, or in English, or in the Judge's mother-tongue.

THE above section applies to M. S. C. C.

201. Whenever the judgment is written in any language other than that of the Court, the judgment shall, if Translation of judgment. any of the parties so require, be translated into the language of the Court, and the translation shall also be signed by the Judge or such officer as he appoints in this behalf.

THE above section applies to M. S. C. C.

202. The judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it, and shall not be altered or added to, save to correct verbal errors or to supply some accidental defect not affecting a material part of the case, or on review.

THE above section applies to M. S. C. C.

203. The judgments of the Courts of Small Causes need not contain more than the points for determination and the decision thereupon.

The judgments of all other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.

THE above section applies to M. S. C. C. and P. S. C. C.

204. In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons thereof, upon each separate issue, unless the finding upon any one or more of the issues be sufficient for the decision of the suit.

IN ORDER to see whether a question is *res judicata* within the meaning of s. 13, Civil Procedure Code, the former decree and the questions decided thereby must alone be considered. The words in s. 13, "has been heard and finally decided by such Court," do not apply to an opinion expressed in the judgment on other issues not material for the purpose of the decree, though properly determined under s. 204 by the Court of first instance. *Niamut Khan v. Phadu Buldia* (I. L. R., 6 Cal. 319) and *Lachman Singh v. Mohan* (I. L. R., 2 All. 497) dissented from. Where a plaintiff improperly brings a defendant before a Court, and the suit is dismissed, the defendant should not be deprived of costs merely because the Court considers the defence a fabrication to meet the plaintiff's claim.—*Devarakonda Narasama* (First Defendant), Appellant, and *Devarakonda Kanaya* (Plaintiff), Respondent, I. L. R., 4 Mad. 134.

205. The decree shall bear date the day on which the judgment was pronounced; and, when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree.

THE above section applies to M. S. C. C. and P. S. C. C.

206. The decree must agree with the judgment: it shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claims, as stated in the register, and shall specify clearly the relief granted or other determination of the suit.

The decree shall also state the amount of costs incurred in the suit, and by what parties and in what proportions such costs are to be paid.

If the decree is found to be at variance with the judgment, or if any clerical or arithmetical error be found in the decree, the Court shall, of its own motion, or on that of any of the parties, amend the decree so as to bring it into conformity with the judgment, or to correct such error: provided that reasonable notice has been given to the parties or their pleaders of the proposed amendment.

THE above section applies to M. S. C. C. and P. S. C. C.

AN application to amend a decree, which is found to be at variance with the judgment, in accordance with the provisions of s. 206 of the Civil Procedure Code, is an application of the kind mentioned in No. 178 of sched. ii. of Act XV. of 1877, and as such subject to the limitation of three years.—In the matter of the petition of Gaya Prasad v. Sikri Prasad, I. L. R., 4 All. 23.

ANY order made upon an application for a review of judgment, except an order absolutely rejecting the application, becomes, if it in any way modifies or alters the original order, although the modification or alteration extends only to the rectification of a clerical mistake, the final order in the case ; and the party aggrieved by the original decree is entitled, although the modification or alteration was made in his favour, to treat the order upon review of judgment as the final decree or order in the case ; and if it was made by a Court, an appeal from which lies in the Court of a District Judge, he is entitled to prefer his appeal at any time within thirty days from its date. When an application for a review of judgment is made upon several grounds, one of which refers only to the question of adjudication of costs, and the Court to whom the application is made holds all the other grounds to be untenable, but is of opinion that there has been a clerical mistake in that part of its order or judgment which refers to costs, it may reject the application absolutely, and permit the applicant to apply, under s. 206 of the Civil Procedure Code, for a rectification of the clerical mistake ; but if it does not do so, but, on the application for a review of judgment, amends the clerical mistake in its original order, the decree drawn up in conformity to this order becomes the final decree, and an appeal will lie against it if brought within the time prescribed for bringing an appeal against any other similar decree.—Joykishen Mookerjee v. Ataor Rohoman, I. L. R., 6 Cal. 22.

207. When the subject-matter of the suit is immoveable property, and such property is identified by boundaries or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers.

208. When the suit is for moveable property, if the decree be for the delivery of such property, it shall also state the amount of money to be paid as an alternative if delivery cannot be had.

THE above section applies to M. S. C. C. and P. S. C. C.

209. When the suit is for a sum of money due to the plaintiff, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the Court deems reasonable on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.

THE above section applies to M. S. C. C. and P. S. C. C.

THE contract rate of interest must be allowed up to the date of decree in accordance with Act XXVIII. of 1855, s. 2. The Civil Procedure Code, s. 209, does not expressly refer to suits in which interest has been contracted for, and does not repeal the former Act.—Bandaru Sivámi Naidu and another (Plaintiffs), Appellants, v. Atchayamma and another (Defendants), Respondents, I. L. R., 3 Mad. 125.

210. In all decrees for the payment of money, the Court may, for any sufficient reason, order that the amount shall be paid by instalments, with or without interest.

And, after the passing of any such decree, the Court may, on the Order, after decree, for application of the judgment-debtor, and with payment by instalments. the consent of the decree-holder, order that the amount decreed be paid by instalments, on such terms as to the payment of interest, the attachment of the property of the defendant, or the taking of security from him, or otherwise, as it thinks fit :

Save as provided in this section and section 206, no decree shall be altered at the request of parties.

THE above section applies to M. S. C. C. and P. S. C. C.

ACT X. of 1877, s. 210, is not applicable in a suit for the recovery of the amount of a bond-debt by the sale of the property hypothecated by such bond. In such a suit, therefore, the Court cannot direct that the amount of the decree shall be payable by instalments.—*Hardeo Das v. Hukam Singh*, I. L. R., 2 All. 320.

THERE is nothing in Act X. of 1877, s. 210, or elsewhere in that Act, authorizing a Court to direct that the amount of a decree should be paid within a fixed time from its date. *Semble*.—That s. 210 is not applicable in a suit for the recovery of the amount of a bond-debt by the sale of the *nankar* allowance hypothecated by such bond.—*Bachhu v. Madad Ali*, I. L. R., 2 All. 649.

THE word “debt” in ss. 20 and 21 applies only to a liability for which a suit may be brought, and does not include a liability for which judgment has been obtained. Therefore, where the last application for execution of a decree had been made on the 14th December 1872, and a notice under Act VIII. of 1859, s. 216, issued on the 19th January 1873, and on the 28th April 1873 the judgment-debtor filed a petition notifying part-payment, which petition was signed by the judgment-creditor : *Held*, in an application for execution made on the 27th April 1876, that further execution was barred by Limitation (Act IX. of 1871).—*Kally Prosonno Hazra v. Heera Lall Mundle*, I. L. R., 2 Cal. 468.

WHERE a decree was passed by consent in 1872 for payment to plaintiff through the Court of Rs. 300 by fifteen annual instalments on the 20th February in each year, and in default of payment of any instalment the whole amount became recoverable, and four years’ instalments were paid out of Court, and default made on the 20th February 1877, and plaintiff applied to recover the instalment of 1877 by execution on the 17th November 1879 and the 1st March 1880 : *Held* that the application of November 1879 was not barred under cl. b, art 179, sch. ii., of the Limitation Act of 1877, inasmuch as, when the Indian Limitation Act, 1877, came into force (1st October 1877), the application was not barred under cl. 6, art. 167, sch. ii., of the Indian Limitation Act, 1871. *Held* also that the provision as to the whole amount becoming recoverable at once if default was made did not affect the admissibility of the application for execution, because that provision had not been enforced, and the obligation to pay by instalments was still subsisting.—*Karakavalasa Appáyya (Defendant), Appellant, v. Káranam Papáyya (Plaintiff), Respondent*, I. L. R., 3 Mad. 256.

THE words “decree passed against an agriculturist” in s. 20 of the Dekhan Agriculturists’ Relief Act (XVII. of 1879) mean a decree passed against an agriculturist personally, and do not include a decree for the recovery of money by the sale of mortgaged property. The effect of that section must be taken to be an enlargement of the indulgence granted by s. 210 of the Civil Procedure Code (Act X. of 1877), but only in those cases to which the latter section applies. By s. 210 of the Civil Procedure Code, the Court may, after the passing of a decree in money-suits, order the amount to be paid by instalments, provided the decree-holder consents. By s. 20 of Act XVII. of 1879 the Court may make the same order in similar suits, without the consent of the decree-holder. In the case of a debt secured by a mortgage, the agriculturist’s remedy lies in a suit, not for an account, but for redemption; and the only decree which can be made in such a suit, in the absence of any special provision in the Act, is the ordinary decree for payment of the whole amount within six months, or, in default, for foreclosure.—*Hardeo Das v. Hukam Singh* (I. L. R., 2 All. 320) referred to and approved.—*Shankarápa Dargo Patel (Original Plaintiff), Appellant, v. Dánápa Virantápa (Original Defendant), Respondent*, I. L. R., 5 Bom. 604.

A JUDGMENT-DEBTOR, whose property was about to be sold, appeared before the officer appointed to conduct the sale, and applied for its postponement, producing a surety and a bond in which such surety promised to pay the amount of the decree within one year, if the judgment-debtor did not do so. Such officer thereupon applied to the District Judge to postpone the sale, stating that such surety was willing to pay the amount of the decree, by instalments within one year, and forwarding such bond. The District Judge ordered the sale to be postponed and the papers to be sent to the Munsif who had made the decree and ordered the sale of the property. The Munsif made no order regarding the security, but merely made an order that the amount of the decree should be paid by instalments within one year. The judgment-debtor did not pay the amount of the decree within the time fixed, and the decree-holder therefore applied for execution of the decree against such surety. Held that, inasmuch as the decree-holder had not been a party to the proceedings of the sale-officer or of the District Judge, and as the parties had not appeared before the Munsif, and as such surety had not agreed to pay the amount of the decree by instalments, the provisions of s. 210 of Act X. of 1877 were not applicable, and such surety had not become a party to the decree as altered by the Munsif; that such surety had not made himself a party to the decree by promising to pay its amount within one year; and that therefore his liability was not one which could be enforced in execution of the decree under s. 253 of Act X. of 1877.—*Chandan Kuar (Surety) v. Tirkha Ram (Decree-holder)*, I. L. R., 3 All. 809.

211. When the suit is for the recovery of possession of immove-

able property yielding rent or other profit, the Court may decree payment of rent or mesne-profits with interest. Court may provide in the decree for the payment of rent or mesne-profits in respect of such property from the institution of the suit until the delivery of possession to the party in whose favour the decree is made, or until the expiration of three years from the date of the decree (whichever event first occurs), with interest thereupon at such rate as the Court thinks fit.

Explanation.—‘Mesne-profits’ of property mean those profits which the person in wrongful possession of such property actually received, or might with ordinary diligence have received, therefrom, together with interest on such profits.

212. When the suit is for the recovery of possession of immoveable

property and for mesne-profits which have accrued on the property during a period prior to the institution of the suit, and the amount of such profits is disputed, the Court may either determine the amount by the decree itself, or may pass a decree for the property, and direct an inquiry into the amount of mesne-profits, and dispose of the same on further orders.

213. When the suit is for an account of any property and for its due administration under the decree of the

Administration-suit. Court, the Court, before making the decree, shall order such accounts and inquiries to be taken and made, and give such other directions, as it thinks fit.

In the administration by the Court of the property of any person who dies after this Code comes into force, if such property proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities proveable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being with respect to the estates of persons adjudged insolvent;

and all persons who, in any such case, would be entitled to be paid out of such property, may come in under the decree for its administration, and make such claims against the same as they may respectively be entitled to by virtue of this Code.

Applications under section 265 of the Indian Contract Act, 1872, shall be deemed to be suits within the meaning of this section.

214. When the suit is to enforce a right of pre-emption in respect

Suit to enforce right of pre-emption. of a particular sale of property, and the Court finds for the plaintiff, if the amount of purchase-money has not been paid into Court, the decree shall specify a day on or before which it shall be so paid, and shall declare that, on payment of such purchase-money, together with the costs (if any) decreed against him, the plaintiff shall obtain possession of the property, but that, if such money and costs are not so paid, the suit shall stand dismissed with costs.

THE decree of the Court of first instance in a suit to enforce a right of pre-emption directed that the sum which that Court had ascertained to be the purchase-money should be deposited within one month from the date of the decree. Plaintiff appealed, contending that such sum was not the purchase-money. While the appeal was pending, the time fixed by the decree of the Court of first instance expired without any deposit having been made. The Appellate Court dismissed the appeal, fixing by its decree, of its own motion, a further time for the deposit: *Held* that the Appellate Court was competent to extend the time for making the deposit, and its action and order did not contravene the provisions of Act X. of 1877, s. 214.—*Parshadi Lal v. Ram Dial*, I. L. R., 2 All. 744.

M SUE D K and J to enforce a right of pre-emption in respect of property which he alleged K had sold to J. K denied that she had sold such property to J. J set up as a defence that M had waived his right of pre-emption. The Court of first instance dismissed the suit on the ground that the alleged sale had not taken place. J appealed, making M and K respondents. The lower Appellate Court dismissed the appeal, also holding that the alleged sale had not taken place. J then appealed to the High Court, making K the respondent. *Held* that neither the appeal from the original decree in the suit, nor the appeal from the appellate decree therein, was admissible. *Held* also that the finding as to the alleged sale was one between the plaintiff and defendants in the suit, and not between the defendant-vendor and the defendant-vendee, who were litigating, and would not bar adjudication of the matter in issue between them in a suit brought by the latter for the establishment of the sale.—*Jumna Singh and another (Defendants) v. Kamar-un-nisa (Plaintiff)*, I. L. R., 3 All. 152 (F. B.).

THE decree in a suit to enforce a right of pre-emption, dated the 12th December, 1879, declared that the plaintiff should obtain possession of the property on payment of the purchase-money "within thirty days," but that, if such money was not so paid, the suit should stand dismissed. The period specified in the decree for the payment of the purchase-money, the day on which the decree was made not being computed, expired on the 11th January following. That day was a Sunday: the plaintiff paid the purchase-money into Court on the next day, the 12th January. *Held* that, inasmuch as the day on which the decree was made should not be taken into account in computing the period specified in the decree for the payment of the purchase-money, nor the last day of that period, that day being a Sunday, the plaintiff had complied with the condition imposed on him by the decree.

Semble that, if the plaintiff had actually failed to deposit the purchase-money within thirty days as directed by the decree, his suit would have been liable to be dismissed, as he could not have claimed to have such period computed from the date the decree became final.—*Babi Din Rai (Plaintiff) v. Muhammad Ali and others (Defendants)*, I. L. R., 3 All. 850.

215. When the suit is for the dissolution of a partnership, the Court, before making its decree, may pass an order fixing the day on which the partnership shall stand dissolved, and directing such accounts to be taken and other acts to be done as it thinks fit.

IN A suit for an account of partnership-transactions, the Subordinate Judge, in whose Court the suit was instituted, framed certain issues with the object of ascertaining who managed the business; with whom the partnership-property was; whether the defendants ought to account; what was the capital, and what the expenditure and profits of the firm; and after taking evidence on these points, dismissed the suit.

Held that the Subordinate Judge should have followed the course pointed out in forms 132 and 133 of sched. iv. of the Civil Procedure Code, and at the first hearing should have determined whether there had been a partnership; what were its conditions; was it dissolved, or ought it to be dissolved; and who were the parties interested, and in what shares; and, upon determining these questions, should have directed accounts to be taken; and, after the accounts had been taken, should have made a final decree.

Held also that the suit should not have been instituted in the Court of the Subordinate Judge, and the case was transferred to the Court of the District Judge.

The plaintiff in a partnership-suit ought to be framed on the lines of form 113 in sched. iv. of the Code, and the accounts should be taken as prayed in that form. Under ordinary circumstances, the costs of a partnership-suit should be paid out of the assets of the partnership, or, in default of assets, by the partners in proportion to their respective shares, unless any partner denies the fact of a partnership, or opposes obstacles to the taking of the accounts, and so renders a suit necessary, when he is usually made to pay the costs up to the hearing.—*Ram Chunder Shah v. Manick Chunder Banikya*, I. L. R., 7 Cal. 428.

215A. When a suit is for an account of pecuniary transactions between a principal and agent, and in all other suits not hereinbefore provided for, where it is necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken, the Court shall, before making its decree, pass an order directing such accounts to be taken as it thinks fit.

THE above section applies to M. S. C. C. and P. S. C. C.

216. If the defendant has set-off the amount of a debt against the claim of the plaintiff, and such set-off has been allowed, the decree shall state what amount is due to the plaintiff and what amount (if any) is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.

The decree of the Court with respect to any sum awarded to the defendant shall have the same effect, and be subject to the same rules in respect of appeal or otherwise, as if such sum had been claimed by the defendant in a separate suit against the plaintiff.

THE above section applies to M. S. C. C. and P. S. C. C.

APPLICATION for execution of a decree was made on the 10th November 1869, and on the 27th November 1869, notice issued under s. 216 of the Civil Procedure Code. Again on the 4th February 1873 application was made for execution, and notice was issued on the 19th February 1873 under s. 216. A subsequent application for execution was made on the 31st August 1874, and the order for notice to issue, under s. 216, was made on the same day. The question raised in appeal against the order to issue execution was whether the plaintiff's right to

execution was barred, and had been so when the application, dated 31st August 1874, for execution, was made. *Held* on appeal by the High Court (Kernan and Kindersley, J.J.) that as the application for execution on the 4th February 1873, being more than three years after the date of issuing the last prior notice under s. 216, viz., 27th November 1869, was late, under art. 167, para. 5, Act IX. of 1871, execution was barred by limitation at and before the date of that application, and that this bar was not removed by the circumstance that the judgment-debtor had allowed the service of the notice on him in February 1873 to pass unchallenged. *Rájá Chilicany v. Rájá-vulu Naidu* distinguished. *Held* also (following *Chunder Coomar Roy v. Bhogobutty Prasunno Roy*) that "applications to enforce a decree" in para. 4 of art. 167, Act IX. of 1871, mean "applications under s. 212 or otherwise by which proceedings in execution are commenced, and not applications of an incidental kind made during the pendency of such proceedings."—*Prabhacara Row v. Potannah*, I. L. R., 2 Mad. 1.

Certified copies of judgment and decree to be furnished.

217. Certified copies of the judgment and decree shall be furnished to the parties on application to the Court, and at their expense.

THE above section applies to M. S. C. C. and P. S. C. C.

CHAPTER XVIII.

OF COSTS.

218. When disposing of any application under this Code, the Court may give to either party the costs of such application, or may reserve the consideration of such costs for any future stage of the proceedings.

THE above section applies to P. S. C. C.

219. The judgment shall direct by whom the costs of each party Judgment to direct by are to be paid, whether by himself or by any whom costs to be paid. other party to the suit, and whether in whole or in what part or proportion.

THE above section applies to P. S. C. C.

220. The Court shall have full power to give and apportion costs of every application and suit in any manner it thinks fit, and the fact that the Court has no jurisdiction to try the case is no bar to the exercise of such power:

Provided that, if the Court directs that the costs of any application or suit shall not follow the event, the Court shall state its reasons in writing.

Every order relating to costs made under this Code, and not forming part of a decree, may be executed as if it were a decree for money.

THE above section applies to M. S. C. C. and P. S. C. C.

221. The Court may direct that the costs payable to one party by Costs may be set-off against sum admitted or found to be due. another shall be set-off against a sum which is admitted or is found in the suit to be due from the former to the latter.

THE above section applies to M. S. C. C. and P. S. C. C.

222. The Court may give interest on costs at any rate not exceeding six per cent. per annum, and may direct that Interest on costs. Payment of costs out of subject-matter. costs, with or without interest, be paid out of, or charged upon, the subject-matter of the suit.

THE above section applies to M. S. C. C. and P. S. C. C.

CHAPTER XIX.

OF THE EXECUTION OF DECREES.

A.—Of the Court by which Decrees may be executed.

223. A decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution under the provisions hereinafter contained.

The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court,

(a) if the person against whom the decree is passed actually and voluntarily resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or

(b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or

(c) if the decree directs the sale of immoveable property situate outside the local limits of the jurisdiction of the Court which passed it, or

(d) if the Court which passed the decree considers, for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

The Court which passed a decree may, of its own motion, send it for execution to any Court subordinate thereto.

The Court to which a decree is sent under this section for execution shall certify to the Court which passed it the fact of such execution, or, where the former Court fails to execute the same, the circumstances attending such failure.

If the decree has been passed in a case cognizable by a Court of Small Causes, and the Court which passed it wishes it to be executed in Calcutta, Madras, Bombay, or Rangoon, such Court may send to the Court of Small Causes in Calcutta, Madras, Bombay, or Rangoon, as the case may be, the copies and certificate respectively mentioned in clauses (a), (b), and (c) of section 224; and such Court of Small Causes shall thereupon execute the decree as if it had been passed by itself.

If the Court to which a decree is to be sent for execution is situate within the same district as the Court which passed such decree, such Court shall send the same directly to the former Court. But, if the Court to which the decree is to be sent for execution is situate in a different district, the Court which passed it shall send it to the District Court of the district in which the decree is to be executed.

THE above section applies to M. S. C. C.

UNDER Act X. of 1877 a Mufassal Small Cause Court is not at liberty to execute a decree against moveable property beyond its local jurisdiction.—*Munsuk Mosundás v. Shivram Devising*, I. L. R., 2 Bom. 532.

PER GARTH, C. J.—S. 649 of the Civil Procedure Code, as amended by Act XII. of 1879, which explains the meaning of the expression, the "Court which passed the decree," does not exclude the Court which originally passed the decree as being a Court in which an application for execution should be made, but merely includes another Court. When, therefore, a Court which has passed a decree has ceased to

have jurisdiction to execute it, the application for execution may be made either to that Court, although it has ceased to have jurisdiction to execute the decree, or to the Court which (if the suit wherein the decree was passed were instituted at the time of making application to execute it) would have jurisdiction to try the suit. Per Field, J.—A Court does not cease to be “the Court which passed the decree” merely by reason that the head-quarters of such Court are removed to another place, or merely because the local limits of the jurisdiction of such Court are altered. An application for the transfer of a decree under the provisions of s. 223 and the following section of Act X. of 1877 is a step in aid of the execution of the decree within the meaning of cl. 4, art. 179, sched. ii. of Act XV. of 1877.—*Latchman Pundeh v. Maddan Mohun Shye*, I. L. R., 6 Cal. 513.

Procedure when Court desires that its own decree shall be executed by another Court.

224. The Court sending a decree for execution under section 223 shall send

- (a) a copy of the decree ;
- (b) a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the Court by which it was passed, or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unexecuted ; and
- (c) a copy of any order for the execution of the decree, and, if no such order has been made, a certificate to that effect.

THE above section applies to M. S. C. C.

225. The Court to which a decree is so sent shall cause such copies and certificate to be filed, without any further proof of the decree or order for execution, or of the copies thereof, or of the jurisdiction of the Court which passed it, unless the former Court, for any special reasons to be recorded under the hand of the Judge, requires such proof.

THE above section applies to M. S. C. C.

226. When such copies are so filed, the decree or order may, if the Court to which it is sent be the District Court, be executed by such Court or by any subordinate Court which it directs to execute the same.

THE above section applies to M. S. C. C.

227. If the Court to which the decree is sent for execution be a High Court, the decree shall be executed by such Court in the same manner as if it had been made by such Court in the exercise of its ordinary original civil jurisdiction.

THE above section applies to M. S. C. C.

228. The Court executing a decree sent to it under this chapter shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its orders in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

THE above section applies to M. S. C. C.

229. A decree of any Court established by the authority of the Governor-General in Council in the territories of any Foreign Prince or State, which cannot be executed within the jurisdiction of the Court by which it was made, may be executed in manner herein provided within the jurisdiction of any Court in British India.

Decrees of Courts established by Government of India in Native States..

THE above section applies to M. S. C. C.

B.—Of Application for Execution.

230. When the holder of a decree desires to enforce it, he shall apply to the Court which passed the decree or to the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court, then to such Court or to the proper officer thereof.

The Court may, in its discretion, refuse execution at the same time against the person and property of the judgment-debtor.

Where an application to execute a decree for the payment of money or delivery of other property has been made under this section and granted, no subsequent application to execute the same decree shall be granted after the expiration of twelve years from any of the following dates (namely)—

(a) the date of the decree sought to be enforced or of the decree (if any) on appeal affirming the same, or

(b) where the decree or any subsequent order directs any payment of money, or the delivery of any property, to be made at a certain date—the date of the default in making the payment or delivering the property in respect of which the applicant seeks to enforce the decree.

Nothing in this section shall prevent the Court from granting an application for execution of a decree after the expiration of the said term of twelve years, where the judgment-debtor has, by fraud or force, prevented the execution of the decree at some time within twelve years immediately before the date of the application.

Notwithstanding anything herein contained, proceedings may be taken to enforce any decree within three years after the passing of this Code, unless when the period prescribed for taking such proceedings by the law in force immediately before the passing of this Code shall have expired before the completion of the said three years.

THE above section applies to M. S. C. C. The first two clauses only apply to P. S. C. C.

THE concluding clause of the same section refers to the question of limitation, and not that of due diligence.—*Sohan Lal v. Karim Baksh*, I. L. R., 2 All. 281.

THE words, "the last preceding application," in Act X. of 1877, s. 230, cl. 3, mean an application under that section, and not an application under Act VIII. of 1859.—*Ram Kishen v. Sedha*, I. L. R., 2 All. 275.

WHERE an application to execute a decree was made under s. 230 of the Code of Civil Procedure before the amendment Act (XII. of 1879) came into force, but was not disposed of until after s. 230 was altered by that Act: *Held* that the rule in *Wright v. Hale* (6 H. & N. 227) applied, and that the Act, as amended, was the law to be applied.—*Papa Sastrial* (Plaintiff), Appellant, *v. Anuntarama Sastrial* (Defendant), Respondent, I. L. R., 3 Mad. 98.

THE parties to a decree presented a petition to the Court executing decree, stating that it had been agreed between them that the amount of the decree should be paid by ten monthly instalments of Rs. 500 each. The Court made an order directing that such petition should be filed. *Held* that this order did not amount to one directing payment of money to be made at a certain date, which would give a fresh period of limitation under s. 230 (b) of the Civil Procedure Code.—*Bal Chand and another (Judgment-debtors) v. Raghunath Das and another (Decree-holders)*, 1 L. R., 4 All. 155.

ON the 1st June 1880, several decree-holders applied to the subordinate Civil Court of Pámer for execution of their decree. They had taken out execution several times previously, the date of their last preceding application being 1st June 1877. The Subordinate Judge was of opinion that the applications were barred under the last clause of s. 230 of the Civil Procedure Code (Act X. of 1877). On his referring the cases to the High Court: *Held* that the applications were not barred, inasmuch as the previous applications for execution had not been made under s. 230 of Act X. of 1877, that Act not being then in force.—*Anandráv Chimuji Avati (Plaintiff), v. Thákarchand (Defendant)*, 1 L. R., 5 Bom. 245.

AN APPLICATION, under Act VIII. of 1859, for execution of decree, was rejected by the Judge on the ground that the judgment-creditor had withdrawn from the former application. This order was reversed on appeal, and the case was sent back for disposal on its merits. The Judge then held that Act X. of 1877, which had just come into force, applied, and, on the ground that the decree-holder had failed to set execution upon his former application, dismissed the petition, but referred the case to the High Court upon the question whether he was, under the circumstances, at liberty to grant the application: *Held* that he was, and that the application should have been dealt with under the law which was in force at the time execution was sought. The effect of the provisions of Act X. of 1877, s. 230, considered.—*Byraddi Subbareddi v. Dásappa Rau*, 1 L. R., 1 Mad. 403.

THE transferee of a decree applied, while an application by the original holder of such decree to execute it was pending, to be allowed to execute it. The Court, in accordance with Act X. of 1877, s. 232, directed notice of the transferee's application to be given to the transferor and the judgment-debtor. The transferee failed to pay the court-fee leviable for the issue of such notice, and the Court dismissed his application. The transferee subsequently made a second application to be allowed to execute the decree. *Held* that such application could not be rejected, with reference to s. 230, on the ground that due diligence had not been used on the former application to procure complete satisfaction of the decree, because such application had not been granted, and, therefore, the question whether "on the last preceding application" due diligence was used to procure such satisfaction did not arise.—*Sadik Ali Khan v. Muhammad Husain Khan*, 1 L. R., 2 All. 384.

IN execution of a decree passed more than twelve years before the date of the Civil Procedure Code (Act X. of 1877), certain judgment-creditors applied for the attachment and sale of certain specified property belonging to their judgment-debtor, previous to the date on which the three years allowed for such execution, under s. 230, would have expired. Subsequently, after the three years had elapsed, they filed a fresh application, praying that certain other property of their judgment-debtor might be attached and sold in lieu of that specified in their former application, and that the latter might be released. *Held* that execution of the decree was barred by limitation. *Per* Prinsep, J.—Under s. 230 of the Civil Procedure Code, it was intended by the Legislature that a decree holder, seeking to execute a decree passed more than twelve years before, should have one opportunity to execute that decree, and that, if he fails to satisfy it on that application, any further application becomes barred.—*Sreenath Gochoo v. Yusoo Khan*, 1 L. R., 7 Cal. 556.

THE plaintiff obtained a decree in 1864. The first application for execution was made in September 1869 under s. 216 of the Civil Procedure Code (Act VIII. of 1859); and after notice to the defendant as provided thereby, an order was made under that section for execution to issue. In September 1880, an application for execution was made under s. 230 of the Civil Procedure Code of 1877, which repealed Act VIII. of 1859. *Held* that the order after notice had the effect of reviving the decree within the meaning of art. 180, sched. ii., Act XV. of 1877, and therefore the decree was not barred by the law of limitation. An order for execution under the Code,

made after notice to show cause, has, on the original side of the Court, the same effect as an award of execution in pursuance of a writ of *scire facias* had under the procedure of the Supreme Court,—i.e., it creates a revivor of the decree. The clause of s. 230 of Act X. of 1877, which prohibits a subsequent application for execution, only applies where the previous application has been made under that section, and not where such previous application has been made under Act VIII. of 1859.—*Ashoo-tosh Dutt v. Doorga Churn Chatterjee*, I. L. R., 6 Cal. 504.

231. If a decree has been passed jointly in favour of more persons

Application by joint decree-holder. his or their representatives, may apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the representative in interest of the deceased.

If the Court sees sufficient cause for allowing the decree to be executed on an application so made, it shall pass such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

THE above section applies to M. S. C. C. and P. S. C. C.

ALTHOUGH the Civil Procedure Code does not allow one of several decree-holders to apply for the partial execution of a joint-decree, yet an application by one of such decree-holders for execution of the decree in respect of so much of the relief granted to all as he considers appertains to him individually may keep in force the decree as being an application according to law.—*Ponnampilath Parapravan Kuthath Haji (Petitioner), Appellant, v. Ponnampilath Parapravan Baotti Haji (Counter-Petitioner), Respondent*, I. L. R., 3 Mad. 79.

A DECREE passed jointly in favour of more persons than one can only be legally executed as a whole for the benefit of all the decree-holders, and not partially to the extent of the interest of each individual decree-holder. *Held*, therefore, where one of two persons in whose favour a decree for money had been passed jointly applied, on the 27th April 1880, for execution of a moiety of such decree, and the other of such persons made a similar application on the 30th April 1880, that such applications, not being in accordance with law, were not sufficient to keep the decree in force. Also that the illegality of such applications could not be cured by a subsequent amended application for the execution of the decree as a whole preferred after the period of limitation had expired.—*The Collector of Shahjahanpur, Manager of the Estate of Raja Jagan Nath Singh (Decree-holder), v. Surjan Singh and another (Judgment-debtors)*, I. L. R., 4 All. 72.

232. If a decree be transferred by assignment in writing, or by

Application by transferee of decree. operation of law, from the decree-holder to any other person, the transferee may apply for its execution to the Court which passed it; and, if that Court thinks fit, the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder :

Provided as follows :—

(a) where the decree has been transferred by assignment, notice in writing of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to such execution :

(b) where a decree for money against several persons has been transferred to one of them, it shall not be executed against the others.

THE above section applies to M. S. C. C. and P. S. C. C.

THE transferee of a decree applied, while an application by the original holder of such decree to execute it was pending, to be allowed to execute it. The Court, in accordance with Act Xⁱ of 1877, s. 232, directed notice of the transferee's application to be given to the transferor and the judgment-debtor. The transferee failed to pay the court-fee leviable for the issue of such notice, and the Court dismissed his application. The transferee subsequently made a second application to be allowed to execute the decree: *Held* that such application could not be rejected, with reference to s. 230, on the ground that due diligence had not been used on the former application to procure complete satisfaction of the decree, because such application had not been granted, and, therefore, the question whether "on the last preceding application" due diligence was used to procure such satisfaction did not arise.—*Sadik Ali Khan v. Muhammad Husain Khan*, I. L. R., 2 All. 384.

233. Every transferee of a decree shall hold the same subject to the equities (if any) which the judgment-debtor might have enforced against the original decree-holder.

Transferee to hold subject to equities enforceable against original holder.

THE above section applies to M. S. C. C. and P. S. C. C.

234. If a judgment-debtor dies before the decree has been fully executed, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.

If judgment-debtor die before execution, application may be made against his representative.

Such representative shall be liable only to the extent of the property of the deceased which has come to his hands, and has not been duly disposed of; and for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion, or on the application of the decree-holder, compel the said representative to produce such accounts as it thinks fit.

THE above section applies to M. S. C. C. and P. S. C. C.

A HINDU widow instituted a suit to recover possession of certain property belonging to her deceased husband, and that suit was dismissed with costs. The widow having died before execution for the costs was taken out, the decree-holder sought to take out execution against the next heirs of the late widow's deceased husband. *Held* that the fact that the widow did not in her suit seek to recover any interest personal to herself, but that she contracted the judgment-debt in the effort to recover a portion of her husband's estate, to which, in its entirety, the next heirs of her late husband had succeeded, was sufficient to make the whole estate liable, and would entitle the decree-holder to satisfy his decree against "the legal representatives" of the late widow's husband, under s. 234 of Act X. of 1877. In a decree against a Hindu widow, it should be stated whether the decree is a personal decree, or one against her as representing her deceased husband.—*Ramkishore Chuckerbutty v. Kallykanto Chuckerbutty*, I. L. R., 6 Cal. 479.

AS THE entire interest in an impartible zamindari passes upon the death of the father to the son, there is nothing in the estate itself which can be attached as assets of the father under a decree against him, or which can be made available in execution of the decree against his son as his representative. Though a son is bound, under Hindu law, to pay his father's just debts from any property he may possess, yet, when he is made a party to a decree as representative of his deceased father for the purpose of executing it, his liability is limited to the amount of assets of the deceased which may have come to his hands and has not been duly disposed of. An appeal lies from an *ex-parte* order directing attachment in execution of a decree.—*Sangili Virapandia Chinnathambiar*, Zamindar of Sivagiri (Defendant), Appellant, v. *Alwar Ayyangar* (Plaintiff), Respondent (in No. 389); *Thambu Chinnammal Janaki* (Plaintiff), Respondent (in No. 390); *Minatchi Ammal* (Plaintiff), Respondent (in No. 391); *Muttusamia Pillai* (Plaintiff), Respondent (in No. 392), I. L. R., 3 Mad. 42.

235. The application for the execution of a decree shall be in writing verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain, in a tabular form, the following particulars (namely)—

- 1 (a) the number of the suit ;
- 2 (b) the names of the parties ;
- 3 (c) the date of the decree ;
- 4 (d) whether any appeal has been preferred from the decree ;
- 5 (e) whether any and what adjustment of the matter in dispute has been made between the parties subsequently to the decree ;
- 6 (f) whether any and what previous applications have been made for execution of the decree and with what result ;
- 7 (g) the amount of the debt or compensation, with the interest (if any), due upon the decree, or other relief granted thereby ;
- 8 (h) the amount of costs (if any) awarded ;
- 9 (i) the name of the person against whom the enforcement of the decree is sought ; and
- 10 (j) the mode in which the assistance of the Court is required, whether by the delivery of property specifically decreed, by the arrest and imprisonment of the person named in the application, or by the attachment of his property, or otherwise as the nature of the relief sought may require.

THE above section applies to M. S. C. C. and P. S. C. C.

IN execution of a decree passed more than twelve years before the date of the Civil Procedure Code (Act X. of 1877), certain judgment-creditors applied for the attachment and sale of certain specified property belonging to their judgment-debtor, previous to the date on which the three years allowed for such execution, under s. 230, would have expired. Subsequently, after the three years had elapsed, they filed a fresh application, praying that certain other property of their judgment-debtor might be attached and sold in lieu of that specified in their former application, and that the latter might be released. *Held* that execution of the decree was barred by limitation. *Per* Prinsep, J.—Under s. 230 of the Civil Procedure Code, it was intended by the Legislature that a decree-holder, seeking to execute a decree passed more than twelve years before, should have one opportunity to execute that decree, and that, if he fails to satisfy it on that application, any further application becomes barred.—*Sreenath Goocho v. Yusoo Khan*, I. L. R., 7 Cal. 556.

UPON an application under s. 235 of Act X. of 1877 (Civil Procedure Code) for the execution of a decree, which directed the judgment-debtor forthwith to pull down and remove such portion of a wall as had been erected by him upon the wall of the decree-holder, the mode in which the assistance of the Court was required to be given was stated in column j of such application to be by giving the decree-holder possession of his wall by pulling down the wall erected thereon. The Court directed an order to issue to the Nazir to remove the judgment-debtor's wall from the top of the decree-holder's wall. *Held* that the decree-holder's application could not be granted in that form, and that he should have asked the assistance of the Court to be given in the way provided for by s. 260 of Act X. of 1877, by the imprisonment of the judgment-debtor or the attachment of his property or both. *Held* also that the Court was wrong in passing the order it had, but that it should have pointed out to the decree-holder the manner in which he should have asked the assistance of the Court to be given and the remedy to which he was entitled ; and that, upon such amended application being made, the proper course to pursue was to serve a notice on the judgment-debtor, directing him to comply with the order contained in the decree within a time to be fixed by such notice ; and that, if he failed to comply with such order within the time so limited, the Court might

then, at the instance of the decree-holder, make an order, either for the judgment-debtor's imprisonment, or for the attachment of his property, due regard being had to the provision of s. 260 in the latter case. *Held*, further, that the High Court, in special appeal, should not vary the order for execution which had been passed in such a way as to give the decree-holder that relief for which he did not ask.—*Protap Chunder Dass (Judgment-debtor) v. Peary Chowdhraïn (Decree-holder)*, I. L. R., 8 Cal. 174.

236. Whenever an application is made for the attachment of any

Application for attachment of moveable property to be accompanied with inventory.

moveable property belonging to the judgment-debtor, but not in his possession, the decree-holder shall annex to the application an inventory of the property to be attached, containing

a reasonable accurate description of the same.

THE above section applies to M. S. C. C. and P. S. C. C.

In execution of a decree passed more than twelve years before the date of the Civil Procedure Code (Act X. of 1877), certain judgment-creditors applied for the attachment and sale of certain specified property belonging to their judgment-debtor, previous to the date on which the three years allowed for such execution under s. 230, would have expired. Subsequently, after the three years had elapsed, they filed a fresh application, praying that certain other property of their judgment-debtor might be attached and sold in lieu of that specified in their former application, and that the latter might be released. *Held* that execution of the decree was barred by limitation. *Per* Prinsep, J.—Under s. 230 of the Civil Procedure Code, it was intended by the Legislature that a decree-holder, seeking to execute a decree passed more than twelve years before, should have one opportunity to execute that decree, and that, if he fails to satisfy it on that application, any further application becomes barred.—*Sreenath Goocho v. Yusoo Khan*, I. L. R., 7 Cal. 556.

237. Whenever an application is made for the attachment of any

Further particulars when application is for attachment of immoveable property.

immoveable property belonging to the judgment-debtor, it shall contain at the foot a description of the property sufficient to identify it, and also a specification of the judgment-

debtor's share or interest therein to the best of the belief of the applicant, and so far as he has been able to ascertain the same.

Every such description and specification shall be verified in manner hereinbefore provided for the verification of plaints.

UNDER the Civil Procedure Code (Act VIII. of 1859) an application to the Court to continue the attachment of immoveable property, but to stay the sale of it: *Held* to be a proceeding to keep in force the decree.—*Nukanna v. Ramasami*, I. L. R., 2 Mad. 218.

In execution of a decree passed more than twelve years before the date of the Civil Procedure Code (Act X. of 1877), certain judgment-creditors applied for the attachment and sale of certain specified property belonging to their judgment-debtor, previous to the date on which the three years allowed for such execution, under s. 230, would have expired. Subsequently, after the three years had elapsed, they filed a fresh application, praying that certain other property of their judgment-debtor might be attached and sold in lieu of that specified in their former application, and that the latter might be released. *Held* that execution of the decree was barred by limitation. *Per* Prinsep, J.—Under s. 230 of the Civil Procedure Code, it was intended by the Legislature that a decree-holder, seeking to execute a decree passed more than twelve years before, should have one opportunity to execute that decree, and that, if he fails to satisfy it on that application, any further application becomes barred.—*Sreenath Goocho v. Yusoo Khan*, I. L. R., 7 Cal. 556.

238. If the property be land registered in the Collector's office, the application for attachment shall be accompanied by an authenticated extract from the register of such office, specifying the persons registered as proprietors of, or as possessing any transferable interest in, the land or its revenue, or as liable to pay revenue for such land, and the shares of the registered proprietors.

• C.—Of staying Execution.

239. The Court to which a decree has been sent for execution under this chapter shall, upon sufficient cause being shewn, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was made, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay the execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or Appellate Court if execution had been issued thereby, or if application for execution had been made thereto ;

and in case the property or person of the judgment-debtor has been seized under an execution, the Court which issued the execution may order the restitution or discharge of such property or person pending the result of the application for such order.

THE above section applies to M. S. C. C.

WHERE, in the opinion of the Court, sufficient cause has been shown against the execution of a decree transferred for execution, the Court executing the decree should follow the procedure prescribed by Act X. of 1877, s. 239.—*Beerchunder Manikya v. Maymana Bibee*, I. L. R., 5 Cal. 736.

240. Before passing an order under section 239 to stay execution, or for the restitution of property or the discharge of the judgment-debtor, the Court may require such security from, or impose such conditions upon, the judgment-debtor as it thinks fit.

THE above section applies to M. S. C. C.

241. No discharge under section 239 of the property or person of a judgment-debtor shall prevent it or him from being retaken in execution of the decree sent for execution.

THE above section applies to M. S. C. C.

242. Any order of the Court by which the decree was passed, or of such Court of appeal as aforesaid, in relation to the execution of such decree, shall be binding upon the Court to which the decree was sent for execution.

THE above section applies to M. S. C. C.

243. If a suit be pending in any Court against the holder of a decree of such Court, on the part of the person against whom the decree was passed, the Court may (if it think fit) stay execution on the decree, either absolutely or on such terms as it thinks fit, until the pending suit has been decided.

Stay of execution pending
suit between decree-holder
and judgment-debtor.

THE above section applies to M. S. C. C. and P. S. C. C.

D.—Questions for Court executing Decree.

244. The following questions shall be determined by order of the Court executing a decree, and not by separate suit (namely)—

Questions to be decided
by Court executing decree.

(a) questions regarding the amount of any mesne-profits as to which the decree has directed inquiry;

(b) questions regarding the amount of any mesne-profits or interest which the decree has made payable in respect of the subject-matter of a suit, between the date of its institution and the execution of the decree, or the expiration of three years from the date of the decree;

(c) any other questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge, or satisfaction of the decree.

Nothing in this section shall be deemed to bar a separate suit for mesne-profits accruing between the institution of the first suit and the execution of the decree therein, where such profits are not dealt with by such decree.

THE above section applies to M. S. C. C. and P. S. C. C.

AN ORDER refusing an application to execute a decree is not an adjudication within the rule of *res judicata*.—*Hurroosondary Dassie v. Juggobundhoo Dutt*, I. L. R., 6 Cal. 203.

A **SUIT** for the recovery of money paid to a judgment-creditor out of Court in satisfaction of a decree, but not certified, is barred by s. 244 (c) of Act X. of 1877 and by the last paragraph of s. 258 as amended by Act XII. of 1879.—*Pátankar (Plaintiff) v. Devji (Defendant)*, I. L. R., 6 Bom. 146.

THERE is no appeal against an order made under Act X. of 1877, s. 244, determining questions between the parties to a suit as to the amount of mesne-profits recovered by the plaintiff subsequently to the decree, and as to the amount payable on account of the costs of execution of that decree.—*Dalpathbhái Bhagubhái v. Amarsang Khemá Bhái*, I. L. R., 2 Bom. 553. See also I. L. R., 5 Cal. 50.

A **DECREE-HOLDER**, having assigned a share of her decree, applied several times jointly with such assignee for execution. On a subsequent application made by the original decree-holder alone, the Court, while granting the application, directed that the proceeds arising from such execution should only be paid over to the co-decree-holders jointly: *Held* that the question in dispute being one between co-decree-holders, and not between parties to the suit or their representatives as contemplated by Act X. of 1877, s. 244, art. c, no appeal would lie from such order.—*Gyamonee v. Radha Romon*, I. L. R., 5 Cal. 592.

AN ORDER for attachment and sale of property in execution of a decree is an order "of the same nature with" an order made in the course of a suit for attachment of the debtor's property. The latter order is appealable under s. 588, cl. r, of the Code of Civil Procedure. It follows that an order for attachment and sale in execution of a decree is (according to the requirement of s. 588, cl. j) "of the same nature with appealable orders made in the course of a suit," and therefore is appealable under that section.—*Polokdhari Rai and others (Judgment-debtors) v. Radha Persad Singh (Decree-holders)*, I. L. R., 8 Cal. 28.

WHERE an application was made for the issue of execution of decree, and the District Munsif made an order refusing execution, the decree being one passed not in a regular suit, and governed by the one-year limitation; and the Subordinate Judge on appeal reversed the Munsif's order, applying the three years' limitation: *Held* by the High Court that, as Act X. of 1877, s. 588, provided that orders passed in appeal from orders under s. 244 should be final, no second appeal lay; and that the High Court could not interfere under s. 622, as the Subordinate Judge had jurisdiction to hear the appeal.—*Suryaprakasa Ráu v. Vaisya Sanníási Ráu*, I. L. R., 1 Mad. 401.

WHERE a decree-holder, declared to be entitled to possession of certain lands, subsequent to decree executed a patta in favour of his judgment-debtor, who was then in possession, and afterwards took out execution under his decree: *Held* (on an objection by the judgment-debtor that, under these circumstances, he was entitled to possession) that satisfaction of the decree not having been entered up, such objection could not be dealt with under s. 244 of the Civil Procedure Code. *Held* also that s. 258 of the Civil Procedure Code deals with the adjustment of any decree, and not merely with the adjustment of a money-decree.—*Baba Mohamed v. Webb*, I. L. R., 6 Cal. 786.

By a decree in an administration-suit, A was appointed Receiver "to manage the estate." A died, and by a subsequent order B was appointed Receiver. One of the defendants in the suit applied to have B removed from the office of Receiver on the ground of his alleged mismanagement of the estate. The application was refused. *Held* that the order of refusal was appealable, whether the former Code or the present Code of Civil Procedure was deemed to be applicable, being an order made in respect of a question arising between the parties to a suit relating to the execution of the decree.—*Mithibái (Plaintiff) v. Limji Nowroji Banáji and others (Defendants)*; *Harrivellubhdás Calliándás (Original Defendant), Appellant, v. Ardasar Framji Moos (Receiver and Respondent)*, I. L. R., 5 Bom. 45.

THE power given by s. 329 of the Civil Procedure Code to make such order as the Court shall see fit must be construed with regard to the circumstances in respect of which the power is to be exercised. An order under s. 329 should be the result of the fact that the defendant in the suit, who is precluded by the decree from disputing plaintiff's right, unjustly instigates a third party, who has no real interest in the property, to prevent the plaintiff from getting the benefit of his execution. A Court has no power under this section to determine, as between the judgment creditor and a third party obstructing the execution of the decree, important questions on the merits which are wholly unconnected with, and cannot be affected by, the fact that the obstruction is made at the instigation of the defendant.—*Govinda Nair (Petitioner) v. Késava (Counter-Petitioner)*, I. L. R., 3 Mad. 84.

WHERE the plaintiff in a suit prays that a person may be substituted on the record as the heir of a defendant who has died, the Judge should raise an issue as to whether the person sought to be substituted is the heir of the deceased defendant. In 1872, A brought a suit on a mortgage against the mortgagor, a Hindu widow, who died pending the suit. A then applied that the suit should be revived against B as the representative of the defendant. B denied that he was such representative, but the Judge refused to go into the question, made B a party, and gave A a decree for the sale of the mortgaged property. B subsequently brought a suit to have it declared, *inter alia*, that the mortgage and decree only covered the widow's life-interest. *Held* that the suit was not barred either as *res judicata*, or under the provisions of s. 244 of the Code of Civil Procedure.—*Kanai Lall Khan v. Sashi Bhuson Biswas*, I. L. R., 6 Cal. 777.

A suit will not lie upon a decree the execution of which is barred by the provisions of the Limitation Act. A suit may be brought in the High Court of Bombay upon a judgment obtained in the Court of Small Causes of Bombay. The execution of the decrees in such suits is rigorously confined to immoveable estates. The ground of the interference of the High Court in such cases is that, practically, the judgment-creditor could not recover his debt except by process against the immoveable estate of the debtor. In such cases the plaint must contain an averment, and the plaintiff must establish, to the satisfaction of the High Court, that there is not any sufficient moveable property of the defendant against which the

decree of the Court of Small Causes can be fully executed, and that he has immoveable property situated within the original jurisdiction of the High Court against which execution can be had. *Moonsbi Golam Arab v. Curreem Bux Shaikji* (I. L. R., 5 Cal. 294) referred to.—*Fakirapa (Plaintiff) v. Pandurangapa (Defendant)*, I. L. R., 6 Bom. 7.

IN execution of a decree on a mortgage-bond executed by the father of the judgment-debtors, since deceased, which decree directed that the mortgage-lien should be enforced—*first*, by sale of the property specially mortgaged; and, *secondly*, if the debt remained unsatisfied, by the sale of the other property in the possession of the judgment-debtors—the judgment-creditors proceeded to have the mortgaged property sold. After the issue of the sale-notification, and three days prior to the date fixed for the sale, one of the judgment-debtors applied to have the sale stayed, on the ground that an administration-suit was pending with respect to the property of his father, the mortgagor, and also asked that a receiver might be appointed and arrangements made for the purpose of paying off the mortgage-debt and saving the property from being sold. On this application the Court passed an order staying the sale. *Held* that such order was appealable, being a question arising between the parties to the suit in which the decree was passed, and relating to the execution of that decree, and as such coming within the provision of cl. c, s. 244, Act X. of 1877 (Civil Procedure Code). *Held* also that the Court was wrong in passing such order, inasmuch as there were no reasonable grounds why a secured creditor should be debarred from enforcing his security pending the administration-suit.—*Kristomohiny Dossee v. Bama Churn Nag Chowdry*, I. L. R., 7 Cal. 733.

E.—Of the Mode of executing Decrees.

245. The Court, on receiving an application for the execution of a

Procedure on receiving application for execution of decree.

decree, shall ascertain whether such of the requirements of sections 235, 236, 237, and 238 as may be applicable to the case, have been complied with; and if they have not been complied with, the Court may reject the application, or may allow it to be amended then and there, or within a time fixed by the Court. If the application be not so amended, it shall be rejected.

Every amendment made under this section shall be attested by the signature of the Judge.

When the application is admitted, the Court shall enter in the

Procedure on admitting application.

register of the suit a note of the application and the date on which it was made, and shall order execution of the decree according to the nature of the application:

Provided that, in the case of a decree for money, the value of the property attached shall, as nearly as may be, correspond with the amount for which the decree has been made.

THE above section applies to M. S. C. C. and P. S. C. C.

246. If cross-decrees between the same parties for the payment of

Cross-decrees.

money be produced to the Court, execution shall be taken out only by the party who holds a decree for the larger sum, and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum.

If the two sums be equal, satisfaction shall be entered upon both decrees.

Explanation I.—The decrees contemplated by this section are decrees capable of execution at the same time and by the same Court.

Explanation II.—This section applies where either party is an assignee of one of the decrees and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself.

Explanation III.—This section does not apply, unless the decree-holder in one of the suits in which the decrees have been made is the judgment-debtor in the other, and each party fills the same character in both suits; and

the sums due under the decrees are definite.

Illustrations.

(a.) A holds a decree against B for Rs. 1,000. B holds a decree against A for the payment of Rs. 1,000 in case A fails to deliver certain goods at a future day. B cannot treat his decree as a cross-decree under this section.

(b.) A and B, co-plaintiffs, obtain a decree for Rs. 1,000 against C, and C obtains a decree for Rs. 1,000 against B. C cannot treat his decree as a cross-decree under this section.

(c.) A obtains a decree against B for Rs. 1,000. C, who is a trustee for B, obtains a decree on behalf of B against A for Rs. 1,000. B cannot treat C's decree as a cross-decree under this section.

THE above section applies to M. S.-C. C. and P. S. C. C.

S AND two other persons held a decree for costs against M which did not specify the separate interests of each in the decree, and M held a decree for money against S alone which he wished to treat as a cross-decree under Act X. of 1877, s. 246. *Held* that the decree held by S and the other persons was not a decree between the same parties as the parties to the decree held by M, and that his decree could not be treated as a cross-decree under that section.—*Murli Dhur v. Parsotam Das*, I. L. R., 2 All. 91.

247. When two parties are entitled under the same decree to

Cross-claims under same decree. recover from each other sums of different amounts, the party entitled to the smaller sum shall not take out execution against the other party; but satisfaction for the smaller sum shall be entered on the decree.

When the amounts are equal, neither party shall take out execution, but satisfaction for each sum shall be entered on the decree.

THE above section applies to M. S. C. C. and P. S. C. C.

248. The Court shall issue a notice to the party against whom

Notice to show cause why decree should not be executed. execution is applied for, requiring him to show cause, within a period to be fixed by the Court, why the decree should not be executed against him,

(a) if more than one year has elapsed between the date of the decree and the application for its execution, or

(b) if the enforcement of the decree be applied for against the legal representative of a party to the suit in which the decree was made:

Proviso,

Provided that no such notice shall be necessary

in consequence of more than one year having elapsed between the date of the decree and the application for execution, if the application be made within one year from the date of any decree passed on appeal from the decree sought to be executed, or of the last order against the party against whom execution is applied for, passed on any previous application for execution, or

in consequence of the application being against the legal representative of the judgment-debtor, if upon a previous application for execution against the same person the Court has ordered execution to issue against him.

Explanation.—In this section the phrase “the Court” means the Court by which the decree was passed, unless the decree has been sent to another Court for execution, in which case it means such other Court.

THE above section applies to M. S. C. C. and P. S. C. C.

WHEN a judgment-debtor has died after decree, but before application has been made to execute the decree, the Court, before directing the attachment and sale of any property to proceed, must issue a notice to the party against whom the execution is applied for to show cause why the decree should not be executed against him, and its omission to do so will invalidate the entire subsequent proceedings.—In the matter of the petition of Ramessuri Dassee. *Ramessuri Dassee v. Doorgadass Chatterjee*, I. L. R., 6 Cal. 103.

THE plaintiff obtained a decree in 1864. The first application for execution was made in September 1869 under s. 216 of the Civil Procedure Code (Act VIII. of 1859); and after notice to the defendant as provided thereby, an order was made under that section for execution to issue. In September 1880, an application for execution was made under s. 230 of the Civil Procedure Code of 1877, which repealed Act VIII. of 1859. *Held* that the order after notice had the effect of reviving the decree within the meaning of art. 180, sched. ii., Act XV. of 1877, and therefore the decree was not barred by the law of limitation. An order for execution under the Code, made after notice to show cause, has, on the original side of the Court, the same effect as an award of execution in pursuance of a writ of *scire facias* had under the procedure of the Supreme Court,—i.e., it creates revivor of the decree. The clause of s. 230 of Act X. of 1877, which prohibits a subsequent application for execution, only applies where the previous application has been made under that section, and not where such previous application has been made under Act VIII. of 1859.—*Ashootosh Dutt v. Doorga Churn Chatterjee*, I. L. R., 6 Cal. 504.

249. If the person to whom notice is issued under the last preceding

Procedure after issue of notice. section does not appear, or does not shew cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed.

If he offers any objection to the enforcement of the decree, the Court shall consider such objection, and pass such order as it thinks fit.

THE above section applies to M. S. C. C. and P. S. C. C.

250. When the preliminary measures (if any) required by the

Warrant when to issue. foregoing provisions have been taken, the Court, unless it sees cause to the contrary, shall issue its warrant for the execution of the decree.

THE above section applies to M. S. C. C. and P. S. C. C.

IN A suit for an account by a principal against his agent, the plaintiff should ask in his plaint that a proper account may be taken. If the defendant is found

liable to render such account for a certain period, the Court should make an interlocutory decree declaring that he is so liable, and direct him to file an account in Court within a fixed period. This decree may be enforced under s. 260 of the Civil Procedure Code. After an account has been filed, the plaintiff should be allowed reasonable time to examine it. If the objections are numerous, the procedure prescribed by ss. 394 and 395 and form 157 of sched. iv. to the Code should be followed. When the accounts have been taken, the Court must determine the amount due, and the final decree should be for the payment of this amount, and also, if necessary, for the delivery of any papers, vouchers, or other documents which have come into the hands of the agent in the course of his employment. In a suit for an account against A and B as agents, the plaintiff asked for an account as against A from 1265 (1858) to 1283 (1876), and as against B from 1281 (1874) to 1283 (1876). *Held* that there had been no misjoinder. The seven days within which a notice of objections to a decree by a respondent under s. 561 of the Code must be given, is not a period to which the provisions of paragraph 2 of s. 5 of the Limitation Act can be extended, and the Court has no discretion to extend the period. Forms of keeping accounts of joint property in the mufassal considered.—*Degamber Mouzumdar v. Kallynath Roy*, I. L. R., 7 Cal. 654.

251. Such warrant shall be dated the day on which it is issued,

Date, signature, seal, and signed by the Judge or such officer as the Court
delivery. appoints in this behalf, sealed with the seal of
the Court, and delivered to the proper officer to be executed.

And a day shall be specified in such warrant on or before which it must be executed, and the proper officer shall endorse thereon the day and manner in which it was executed, or, if it was not executed, the reason why it was not executed, and shall return it with such endorsement to the Court from which it issued.

THE above section applies to M. S. C. C. and P. S. C. C.

252. If the decree be against a party as the legal representative of

Decree against representative of deceased for money to be paid out of deceased's property. a deceased person, and the decree be for money to be paid out of the property of the deceased, it may be executed by the attachment and sale of any such property :

If no such property remains in the possession of the judgment-debtor, and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property not duly applied by him, in the same manner as if the decree had been against him personally.

THE above section applies to M. S. C. C. and P. S. C. C.

A PERSON may be a representative within the meaning of Act VIII. of 1859, s. 203 (corresponding with Act X. of 1877, s. 252), so as to make the decree effectual for the purpose therein stated, although that person is not the heir.—*Per Markby, J.*, *Assamatham Nissa Bibee v. Roy LutchmEEPut Singh*, I. L. R., 4 Cal. 142 (F.B.).

253. Whenever a person has, before the passing of a decree in an

Decree against surety. original suit, become liable as surety for the performance of the same or of any part thereof,

the decree may be executed against him to the extent to which he has rendered himself liable, in the same manner as a decree may be executed against a defendant :

Provided that such notice in writing as the Court in each case thinks sufficient has been given to the surety.

THE above section applies to M. S. C. C. and P. S. C. C.

AN appeal was preferred to the Privy Council from a final decree passed upon appeal by the High Court, and B and certain other persons on behalf of the appellant gave security for the costs of the respondent. The Privy Council dismissed the appeal, and ordered the appellant to pay the costs of the respondent. The respondent applied to the Court of first instance for the execution of that order against B and the other persons as sureties. *Held* that under Act X. of 1877, ss. 610 and 253, such order could be executed against the sureties.—*Bans Bahadur Singh v. Mughla Begani*, I. L. R., 2 All. 604 (F. B.).

A JUDGMENT-DEBTOR, whose property was about to be sold, appeared before the officer appointed to conduct the sale, and applied for its postponement, producing a surety and a bond in which such surety promised to pay the amount of the decree within one year, if the judgment-debtor did not do so. Such officer thereupon applied to the District Judge to postpone the sale, stating that such surety was willing to pay the amount of the decree by instalments within one year, and forwarding such bond. The District Judge ordered the sale to be postponed and the papers to be sent to the Munsif who had made the decree and ordered the sale of the property. The Munsif made no order regarding the security, but merely made an order that the amount of the decree should be paid by instalments within one year. The judgment-debtor did not pay the amount of the decree within the time fixed, and the decree-holder therefore applied for execution of the decree against such surety. *Held* that, inasmuch as the decree-holder had not been a party to the proceedings of the sale-officer or of the District Judge, and as the parties had not appeared before the Munsif, and as such surety had not agreed to pay the amount of the decree by instalments, the provisions of s. 210 of Act X. of 1877 were not applicable, and such surety had not become a party to the decree as altered by the Munsif; that such surety had not made himself a party to the decree by promising to pay its amount within one year; and that therefore his liability was not one which could be enforced in execution of the decree under s. 253 of Act X. of 1877.—*Chandan Kuar (Surety) v. Tirkha Ram (Decree-holder)*, I. L. R., 3 All. 809.

254. Every decree or order directing a party to pay money, as compensation or costs, or as the alternative to some other relief granted by the decree or order, or otherwise, may be enforced by the imprisonment of the judgment-debtor, or by the attachment and sale of his property in manner herein-after provided, or by both.

THE above section applies to M. S. C. C. and P. S. C. C.

A SUIT on a bond in which immoveable property was hypothecated was adjusted by the defendant agreeing to pay the amount claimed and costs, with interest, by instalments within a fixed time, and that, in the event of default, the plaintiff should be at liberty to bring such property to sale. The Court made a decree ordering the defendant to pay the plaintiff the amount claimed and costs, with interest, "in accordance with" such agreement. *Held* (Turner, J., and Oldfield, J., dissenting) that such decree was a mere money-decree, and not one which gave the plaintiff a lien on such property.—*Janki Prasad (Plaintiff) v. Baldeo Narain and others (Defendants)*, I. L. R., 3 All. 216 (F. B.).

255. If the decree be for mesne-profits or any other matter, the amount of which in money is to be subsequently determined, the property of the judgment-debtor may, before the amount due from him under the decree has been ascertained, be attached as in the case of an ordinary decree for money.

Decree for mesne-profits or other matter, amount of which to be subsequently ascertained.

THE above section applies to M. S. C. C. and P. S. C. C.

256. When a decree is passed for a sum of money only, and the amount decreed does not exceed the sum of one thousand rupees, the Court may, when passing the decree, on the oral application of the decree-holder, order immediate execution thereof by the issue of a warrant directed either against the person of the judgment-debtor if he is within the local limits of the jurisdiction of the Court, or against his moveable property within the same limits.

THE above section applies to M. S. C. C. and P. S. C. C.

257. All money payable under a decree shall be paid as follows (namely)—
 (a) into the Court whose duty it is to execute the decree; or
 (b) out of Court to the decree-holder; or
 (c) otherwise as the Court which made the decree directs.

THE above section applies to M. S. C. C. and P. S. C. C.

257A. Every agreement to give time for the satisfaction of a judgment-debt shall be void, unless it is made for consideration and with the sanction of the Court which passed the decree, and such Court deems the consideration to be under the circumstances reasonable.

Every agreement for the satisfaction of a judgment-debt, which provides for the payment, directly or indirectly, of any sum in excess of the sum due or to accrue due under the decree, shall be void, unless it is made with the like sanction.

Any sum paid in contravention of the provisions of this section shall be applied to the satisfaction of the judgment-debt; and the surplus (if any) shall be recoverable by the judgment-debtor.

THE above section applies to M. S. C. C. and P. S. C. C.

258. If any money payable under a decree is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, or if any payment is made in pursuance of an agreement of the nature mentioned in section 257A, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree.

The judgment-debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after due service of such notice, the decree-holder fails to appear on the day fixed, or, having appeared, fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

No such payment or adjustment shall be recognized by any Court unless it has been certified as aforesaid.

THE above section applies to M. S. C. C. and P. S. C. C.

AN adjustment of a decree not certified to the Court by either party within the time limited by law cannot be recognized as a bar to execution.—*Chedumbara Pillai* (Defendant), Appellant, *v.* Ratna Ammal (Plaintiff), Respondent, I. L. R., 3 Mad. 113.

A SUIT for the recovery of money paid to a judgment-creditor out of Court in satisfaction of a decree, but not certified, is barred by s. 244(c) of Act X. of 1877 and by the last paragraph of s. 258 as amended by Act XII. of 1879.—*Pátankar* (Plaintiff) *v.* Devji (Defendant), I. L. R., 6 Bom. 146.

N, HAVING obtained a decree in a suit against K, requested him to discharge certain sums due on outstanding bonds which N had given to third parties, promising to credit the sums so paid to the amount due under the aforesaid decree. K paid as requested, but N took out execution in full of the decree, and the Court refused to recognize the payments made by K out of Court. In a suit by K for the money paid as aforesaid: *Held* that the payments not having been made directly in adjustment of a decree, the suit was not barred.—*Kunhi Moidin Kutti v. Ramen Unni*, I. L. R., 1 Mad. 203.

WHERE a decree-holder, declared to be entitled to possession of certain lands, subsequent to decree executed a patta in favour of his judgment-debtor, who was then in possession, and afterwards took out execution under his decree: *Held* (on an objection by the judgment-debtor that, under these circumstances, he was entitled to possession) that satisfaction of the decree not having been entered up, such objection could not be dealt with under s. 244 of the Civil Procedure Code. *Held* also that s. 258 of the Civil Procedure Code deals with the adjustment of any decree, and not merely with the adjustment of a money-decree.—*Baba Mohamed v. Webb*, I. L. R., 6 Cal. 786.

259. If the decree be for any specific moveable, or for any share in

Decrees for specific moveables, or recovery of wives. a specific moveable, or for the recovery of a wife, it may be enforced by the seizure, if practicable, of the moveable or share, and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the imprisonment of the judgment-debtor, or by attaching his property, or by both imprisonment and attachment if necessary.

When any attachment under this section has remained in force for six months, if the judgment-debtor has not obeyed the decree, and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed under section 208, such amount, and, in other cases, such compensation, as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

If the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or if, at the end of six months from the date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease to exist.

THE above section applies to M. S. C. C., except so far as relates to the recovery of wives. The whole section applies to P. S. C. C., but, according to clause r, s. 19, Act XV., 1882, the P. S. C. C. have no jurisdiction in suits for the restitution of conjugal rights, for the recovery of a wife, or for a divorce.

260. When the party against whom a decree for the specific per-

Decree for specific performance or restitution of conjugal rights. formance of a contract, or for restitution of conjugal rights, or for the performance of or abstention from any other particular act, has been made, has had an opportunity of obeying the decree or injunction,

and has wilfully failed to obey it, the decree may be enforced by his imprisonment, or by the attachment of his property, or by both.

When any attachment under this section has remained in force for one year, if the judgment-debtor has not obeyed the decree, and the decree-holder has applied to have the attached property sold, the property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and may pay the balance (if any) to the judgment-debtor on his application.

If the judgment-debtor has obeyed the decree, and paid all costs of executing the same, which he is bound to pay, or if, at the end of one year from the date of the attachment, no application to have the property sold has been made and granted, the attachment shall cease to exist.

UPON an application under s. 235 of Act X. of 1877 (Civil Procedure Code) for the execution of a decree which directed the judgment-debtor forthwith to pull down and remove such portion of a wall as had been erected by him upon the wall of the decree-holder, the mode in which the assistance of the Court was required to be given was stated in column *j* of such application to be by giving the decree-holder possession of his wall by pulling down the wall erected thereon. The Court directed an order to issue to the Nazir to remove the judgment-debtor's wall from the top of the decree-holder's wall. *Held* that the decree-holder's application could not be granted in that form, and that he should have asked the assistance of the Court to be given in the way provided for by s. 260 of Act X. of 1877, by the imprisonment of the judgment-debtor, or the attachment of his property, or both. *Held* also that the Court was wrong in passing the order it had, but that it should have pointed out to the decree-holder the manner in which he should have asked the assistance of the Court to be given, and the remedy to which he was entitled; and that, upon such amended application being made, the proper course to pursue was to serve a notice on the judgment-debtor, directing him to comply with the order contained in the decree within a time to be fixed by such notice; and that, if he failed to comply with such order within the time so limited, the Court might then, at the instance of the decree-holder, make an order, either for the judgment-debtor's imprisonment, or for the attachment of his property, due regard being had to the provision of s. 260 in the latter case. *Held*, further, that the High Court, in special appeal, should not vary the order for execution, which had been passed in such a way as to give the decree-holder that relief for which he did not ask.—*Protap Chunder Dass (Judgment-debtor) v. Peary Chowdhrairi (Decree-holder)*, I. L. R., 8 Cal. 174.

261. If the decree be for the execution of a conveyance, or for the

Decree for execution of conveyances, or endorsement of negotiable instruments.

endorsement of a negotiable instrument, and the judgment-debtor neglects or refuses to comply with the decree, the decree-holder may prepare the draft of a conveyance or endorsement in accordance with the terms of the decree, and deliver the same to the Court.

The Court shall thereupon cause the draft to be served on the judgment-debtor in manner hereinbefore provided for serving a summons, together with a notice in writing stating that his objections (if any) thereto shall be made within such time (mentioning it) as the Court fixes in this behalf.

The decree-holder may also tender a duplicate of the draft to the Court for execution, upon the proper stamp-paper if a stamp is required by law.

On proof of such service, the Court, or such officer as it appoints in this behalf, shall execute the duplicate so tendered, or may, if necessary, alter the same, so as to bring it into accordance with the terms of the decree, and execute the duplicate so altered :

Provided that, if any party object to the draft so served as aforesaid, his objections shall, within the time so fixed, be stated in writing, and argued before the Court ; and the Court shall thereupon pass such order as it thinks fit, and execute, or alter and execute, the duplicate in accordance therewith.

262. The execution of a conveyance, or the endorsement of a

negotiable instrument, by the Court under the last preceding section, may be in the following form : "*C. D.*, Judge of the Court of (or as the case may be), for *A. B.* in a suit by *E. F.* against *A. B.*," or in such other form as the High Court may from time to time prescribe, and shall have the same effect as the execution of the conveyance or endorsement of the instrument by the party ordered to execute or endorse the same.

263. If the decree be for the delivery of any immoveable property,

possession thereof shall be delivered over to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, and, if need be, by removing any person bound by the decree who refuses to vacate the property.

264. If the decree be for the delivery of any immoveable property,

in the occupancy of a tenant or other person entitled to occupy the same, and not bound by the decree to relinquish such occupancy, the Court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat of drum, or in such other mode as is customary, at some convenient place, the substance of the decree in regard to the property :

Provided that, if the occupant can be found, a notice in writing containing such substance shall be served upon him, and in such case no proclamation need be made.

265. If the decree be for the partition or for the separate possession

of a share of an undivided estate paying revenue to Government, the partition of the estate or the separation of the share shall be made by the Collector and according to the law (if any) for the time being in force for the partition, or the separate possession of shares, of such estates.

WHERE one of several co-sharers, owners of a piece of land defined by metes and bounds, and forming part of a revenue-paying estate, brings a suit for partition, in which he does not seek to have his joint liability for the whole of the Government revenue annulled, such suit is cognizable by the Civil Courts which have jurisdiction to determine the plaintiff's right to have his share divided and to make a decree accordingly.—*Chundernath Nundi v. Hur Narain Deb*, I. L. R., 7 Cal. 153.

F.—Of Attachment of Property.

266. The following property is liable to attachment and sale in execution of a decree (namely), lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory-notes, Government-securities, bonds or other securities for money, debts, shares in the capital or joint-stock of any railway, banking, or other public Company or Corporation, and, except as hereinafter mentioned, all other saleable property, moveable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power, which he may exercise for his own benefit, and whether the same be held in the name of the judgment-debtor or by another person, in trust for him or on his behalf:

Provided that the following particulars shall not be liable to such attachment or sale (namely)—

- (a) the necessary wearing apparel of the judgment-debtor, his wife and children; + bedding.
- (b) tools of artizans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such;
- (c) the materials of houses and other buildings belonging to and occupied by agriculturists;
- (d) books of account;
- (e) mere rights to sue for damages;
- (f) any right of personal service;
- (g) stipends and gratuities allowed to military and civil pensioners of Government, and political pensions;
- (h) the salary of a public officer or of any servant of a Railway Company, when such salary does not exceed twenty rupees *per mensem*, and one moiety of the salary of any such officer or servant when his salary exceeds that amount;
- (i) the pay and allowances of persons to whom the Native Articles of War apply;
- (j) the wages of labourers and domestic servants;
- (k) an expectancy of succession by survivorship or other merely contingent or possible right or interest;
- (l) a right to future maintenance.

¹ *Explanation.*—The particulars mentioned in clauses (g), (h), (i), and (j), are exempt from attachment or sale, whether before or after they are actually payable;

Provided also that nothing in this section shall be deemed

- (a) to exempt the materials of houses and other buildings from attachment or sale in execution of decrees for rent, or
- (b) to affect the Army Act, 1881, or any similar law for the time being in force.

THE above section applies to M. S. C. C. (except so far as relates to immovable property), and to P. S. C. C. (so far as relates to the attachment of moveable property or decrees therefor).

ACT X. of 1877, s. 266, proviso c, does not prohibit the sale (in execution of decree) of property specifically mortgaged, albeit the property be materials of a house belonging to or occupied by an agriculturist.—*Bhagvándás v. Hathibháí*, I. L. R., 4 Bom. 25.

By Act X. of 1877, s. 266, cl. c, an ordinary judgment-creditor is precluded from attaching or selling the materials of a house, or building belonging to his judgment-debtor, but, by explanation a of the same section, this prohibition does not extend to a creditor whose decree is for rent.—*Mániklál Venilál v. Lakha and Mánsing*, I. L. R., 4 Bom. 429.

HELD that ss. 266 and 295 must be read together, and that an ordinary judgment-creditor is not entitled, under s. 295, to a rateable proportion of the assets realized by the sale of such house or building, under a decree obtained by another creditor for rent due to him in respect of the said house or building.—*Mániklál Venilál v. Lakha and Mánsing*, I. L. R., 4 Bom. 429.

PERSONS who agree to spin cotton belonging to a spinning and weaving company, and to receive a certain amount of money for a certain quantity of cotton spun by them, are labourers within the meaning of s. 266 of the Code of Civil Procedure, Act X. of 1877, and therefore their remuneration is wages, which, under clause j of the section, cannot be attached in execution of a decree.—*Jechand Khusal (Applicant) v. Abá and Báiká (Opponents)*, I. L. R., 5 Bom. 132.

THE right or interest which the vendor of immoveable property has in the purchase-money, where it has been agreed that the same shall be paid on the execution of the conveyance, is not, so long as the conveyance has not been executed, a debt, but a merely possible right or interest, and as such, under s. 266 of Act X. of 1877, is not liable to attachment and sale in the execution of a decree. The person who purchases such a right or interest at a sale in the execution of a decree takes nothing by his purchase.—*Ahmud-ud-din Khan (Plaintiff) v. Majlis Rai and others (Defendants)*, I. L. R., 3 All. 12.

DEBTS due to a British subject by the Gáikwár Government, or by a subject of that Government or of a State in the Province of Káthiáwár, are not debts, which, under s. 266 of the Code of Civil Procedure (Act X. of 1877), are liable to attachment in execution of a decree. Claims over which no Court in British India has jurisdiction are not debts liable to be attached under s. 266 of the Civil Procedure Code (Act X.) of 1877. The mere circumstance that the garnishee is, at the time of the application for attachment, beyond the limits of British India, would not of itself render the debts not liable to be attached.—*Ghamshámlál (Applicant) v. Bhánsáli (Opponent)*, I. L. R., 5 Bom. 249.

ON 28th September 1877 (*i.e.*, three days before Act X. of 1877 came into operation), an application was made for the enforcement of a money-decree by attachment (*inter alia*) of a political pension enjoyed by the defendants. Under Act VIII. of 1859, s. 216, a notice was issued on the same day to the defendants, calling upon them to show cause why the decree should not be executed. The defendants accordingly appeared on the day fixed (at which date Act X. of 1877 had come into force), and contended that, under s. 266, cl. g, of that Act, the pension was no longer attachable. *Held* that all proceedings, commenced and pending when Act X. of 1877 became law, were, under Act I. of 1868, s. 6, to be governed by the law theretofore in force; the general rule of construction contained in that section not being affected or varied by Act X. of 1877, ss. 1 and 3, and that a *bona fide* application for enforcement of a decree in a particular way, coupled with an order of the Court in furtherance of that object, as much constitutes a proceeding in execution commenced and pending as the actual issue of a warrant of attachment.—*Vidyáram v. Chandra Shekharám*, I. L. R., 4 Bom. 163.

267. The Court may, of its own motion, or on the application of

the decree-holder, summon any person whom it thinks necessary, and examine persons as to property liable to be seized.

to any property liable to be seized in satisfaction of the decree, and may require the person summoned to produce any

document in his possession or power relating to such property, and, before issuing the summons of its own motion, shall declare the person on whose behalf the summons is so issued.

THE above section applies to M. S. C. C. and P. S. C. C.

268. In the case of (a) a debt not secured by a negotiable instrument, (b) a share in the capital of any public Company or Corporation, (c) other moveable property not in the possession of the judgment-debtor, except property deposited in, or in the custody of, any Court, the attachment shall be made by a written order prohibiting,

(a) in the case of the debt, the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Court;

(b) in the case of the share, the person in whose name the share may be standing, from transferring the same or receiving any dividend thereon;

(c) in the case of the other moveable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.

A copy of such order shall be fixed up in some conspicuous part of the Court-house, and another copy of the same shall be sent, in the case of the debt, to the debtor, in the case of the share, to the proper officer of the Company or Corporation, and in the case of the other moveable property (except as aforesaid), to the person in possession of the same.

A debtor prohibited under clause (a) of this section may pay the amount of his debt into Court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

In the case of the salary of a public officer or the servant of a Railway Company, the attachment shall be made by a written order, requiring the officer whose duty it is to disburse the salary to withhold every month such portion as the Court may direct, until the further orders of the Court.

A copy of every such order shall be fixed up in a conspicuous part of the Court-house, and shall be served on the officer so required.

Every such officer may, from time to time, pay into Court any portion so withheld, and such payment shall discharge the Government or the Railway Company, as the case may be, as effectually as payment to the judgment-debtor.

THE above section applies to M. S. C. C. and P. S. C. C.

UNDER Act X. of 1877, s. 268, bonds cannot be sold till the end of six months from the date of attachment.—*Nursingdás Rughunáthdás v. Tulsiram bin Doulatráam*, I. L. R., 2 Bom. 558.

THE right or interest which the vendor of immoveable property has in the purchase-money, where it has been agreed that the same shall be paid on the execution of the conveyance, is not, so long as the conveyance has not been executed, a debt, but a merely possible right or interest, and as such, under s. 266 of Act X. of 1877, is not liable to attachment and sale in the execution of a decree. The person who purchases such a right or interest at a sale in the execution of a decree takes nothing by his purchase.—*Ahmud-ud-din Khan (Plaintiff) v. Majlis Rai and others (Defendants)*, I. L. R., 3 All. 12.

A DECREE-HOLDER, by a prohibitory order issued under Act X. of 1877, s. 268, attached a debt due to his judgment-debtor. This person, served with the order, applied, under s. 278, to have the attachment removed. *Held* that the application could not be entertained under s. 278, that section having no application to the case; but that, before issuing a proclamation of sale, in execution of a decree, of the debt so attached, it is the duty of the Court, under s. 287, to ascertain all that the Court considers it material for the intending purchaser to know in order to judge of the nature and value of the property proclaimed for sale. If the property, of which sale is sought, is a debt, and the Court receives notice from the alleged debtor that no debt exists, the Court should satisfy itself as to the existence, or otherwise, of the debt, and, if it comes to the conclusion that no debt exists, should abstain from proceeding to sale.—*Harilál Anthábhái v. Abhesang Meru*, I. L. R., 4 Bom. 323.

269. If the property be moveable property in the possession of the

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| Attachment of moveable property in possession of judgment-debtor. | judgment-debtor, other than the property mentioned in the first proviso to section 266, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof: |
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| Provided that, | when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody will exceed its value, the proper officer may sell it at once. |
| Proviso. | |

The Local Government may, from time to time, make rules for the

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| Power to make rules for maintenance of attached live-stock. | maintenance and custody, while under attachment, of live-stock and other moveable property, and the officer attaching property under this section shall, notwithstanding the provisions of the former part of this section, act in accordance with such rules. |
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THE above section applies to M. S. C. C. and P. S. C. C.

270. If the property be a negotiable instrument not deposited in

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| Attachment of negotiable instruments. | a Court, nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into Court, and held subject to the further orders of the Court. |
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THE above section applies to M. S. C. C. and P. S. C. C.

271. No person executing any process under this Code, directing

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| Seizure of property in building. | or authorizing seizure of moveable property, shall enter any dwelling-house after sunset and before sunrise, or shall break open any outer door of a dwelling-house. But, when any such person has duly gained access to any dwelling-house, he may unfasten and open the door of any room in which he has reason to believe any such property to be: |
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Provided that, if the room be in the actual occupancy of a woman,

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| Seizure of property in zanánás. | who, according to the customs of the country, does not appear in public, the person executing the process shall give notice to her that she is at liberty to withdraw; and, after allowing a reasonable time for such woman to withdraw, and giving her every reasonable facility for withdrawing, he may enter such |
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room for the purpose of seizing the property, using at the same time every precaution, consistent with these provisions, to prevent its clandestine removal.

THE above section applies to M. S. C. C. and P. S. C. C.

A BAILIFF or nazir has authority to break open the door of a shop in order to execute a writ of attachment, the previously existing law on the subject not being altered by Act X. of 1877, s. 271.—*Dāmodar Parsotam v. Ishvar Jethā, I. L. R., 3 Bom. 89.*

It is not necessary that a special order of Court should be made, empowering an officer authorized to arrest a purda-nashin lady to enter the zanāna of the house in which she resides. Under s. 336 of the Civil Procedure Code, if the officer is able to enter the house, he may break into any room in the house, including the zanāna, in order to effect the arrest.—*S. M. Kadumbinee Dossee v. S. M. Koylashkaminee Dossee, I. L. R., 7 Cal. 19.*

272. If the property be deposited in, or be in the custody of, any Court or public officer, the attachment shall be made by a notice to such Court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Court from which the notice issues :

Provided that, if such property is deposited in, or is in the custody of, a Court, any question of title or priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment, or otherwise, shall be determined by such Court.

THE above section applies to M. S. C. C. and P. S. C. C.

In execution of a decree of a Munsif's Court, the plaintiff attached certain money, the proceeds of decrees which her judgment-debtor had obtained against third parties, then lying in a Small Cause Court to her credit, and subsequently obtained an order from the Munsif directing the same to be paid to her in satisfaction of her decree, which order was duly communicated to the Small Cause Court Judge. Subsequently, the defendant, who held another decree against the same judgment-debtor, attached the same sale-proceeds. The Small Cause Court Judge then proceeded, under s. 272 of the Civil Procedure Code, to enquire whether the plaintiff was entitled to any priority over the second attaching creditor, and, having decided that question in the negative, divided the sale-proceeds rateably between them. In a suit brought by the plaintiff, under the above circumstances, to recover from the defendant the portion of the sale-proceeds so paid to him : *Held* that s. 295 of the Civil Procedure Code had no application, inasmuch as the plaintiff had not applied to the Small Cause Court Judge to execute her decree, and it had never been transferred to the Court for execution ; and that the proviso in s. 272 is merely intended to mean that any question of title or priority is to be determined by the Court in which or in whose custody the property is, and not by the Court which made the order of attachment. *Held* also that, previous to the order by the Munsif directing the payment to be made to the plaintiff, the Small Cause Court Judge would have had jurisdiction to deal with the question he had tried ; but as that order was made prior to the attachment by the defendant, the judgment-debtor had no interest in the money which could be so attached, the effect of that order being to vest the property in the money in the plaintiff, and to take it out of the disposal of the Small Cause Court Judge, and consequently the order for distribution was wrong, and the plaintiff was entitled to the decree she sought. *Quære*.—Whether an order made by a Court under s. 272 was intended by the Legislature to be a final order ?—*Gopee Nath Acharjee v. Achcha Bibee, I. L. R., 7 Cal. 553.*

273. If the property be a decree for money passed by the Court which passed the decree sought to be executed, the attachment shall be made by an order of the Court directing the proceeds of the former decree to be applied in satisfaction of the latter decree.

If the property be a decree for money passed by any other Court, the attachment shall be made by a notice in writing to such Court under the hand of the Judge of the Court which passed the decree sought to be executed, requesting the former Court to stay the execution of its decree until such notice is cancelled by the Court from which it was sent. The Court receiving such notice shall stay execution accordingly, unless and until

(a) the Court which passed the decree sought to be executed cancels the notice, or

(b) the holder of the decree sought to be executed applies to the Court receiving such notice to execute its own decree.

On receiving such application, the Court shall proceed to execute the decree, and apply the proceeds in satisfaction of the decree sought to be executed.

In the case of all other decrees the attachment shall be made by a notice in writing, under the hand of the Judge of the Court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way; and, when such decree has been passed by any other Court, also by sending to such Court a like notice in writing to abstain from executing the decree sought to be attached until such notice is cancelled by the Court from which it was sent. Every Court receiving such notice shall give effect to the same until it is so cancelled.

The holder of any decree attached under this section shall be bound to give the Court executing the same such information and aid as may reasonably be required.

THE above section applies to M. S. C. C. and P. S. C. C. (so far as relates to decrees for moveable property).

WHERE two decrees for money, although they were not passed by the same Court, were being executed by the same Court: *Held* that the provisions of the first clause of s. 273 were applicable on principle.—*Sultan Kuar v. Gulzari Lal*, I. L. R., 2 All. 290.

HELD that Act X. of 1877 does not contemplate the sale of a decree for money as the result of its attachment in the execution of a decree, and that the attachment of a decree for money in the mode ordained in s. 273 cannot lead to its sale; also that the last clause but one of s. 273 applies to other than money-decrees.—*Sultan Kuar v. Gulzari Lal*, I. L. R., 2 All. 290.

274. If the property be immoveable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from receiving the same from him by purchase, gift, or otherwise.

The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be fixed up in a conspicuous part of the property and of the Court-house.

When the property is land paying revenue to Government, a copy of the order shall also be fixed up in the office of the Collector of the District in which the land is situate.

A SUIT on a mortgage foreclosed under Reg. XVII. of 1806, s. 8, comprising property attached before the date of the mortgage under s. 81 and the following sections of Act VIII. of 1859, was brought against the purchaser of the attached property, which had been sold under the decree obtained by the attaching creditor. The defence was, that the mortgage, falling within the provisions of s. 240 of the Act, was void as against the attaching creditor and those claiming under him. For the mortgagee it was contended that the attachment could not prevail, it not having been proved affirmatively that the requirements of s. 239, relating to the intimation of the attachment, had been complied with. *Held* that this objection to the validity of the attachment could not be raised for the first time on this appeal, even if it was not rather for the mortgagee, seeking to deprive the attaching creditor of his possession, to prove the non observance of the formalities in question. *Semble*.—A re-attachment of property after decree does not imply an abandonment of an attachment obtained before decree.—*Ramkrishna Das Surrowji v. Surfunnissa Begum*, I. L. R., 6 Cal. 129.

THE defendant obtained a decree against D, father of the plaintiffs, for satisfaction of his debt by the sale of a moiety of a village mortgaged to him by D. In execution of it he attached the mortgaged property, the attachment being made, under Act X. of 1877, s. 274, by an order prohibiting D from transferring or charging the property in any way, and all persons from receiving it from him by purchase, gift, or otherwise. The plaintiffs thereupon applied for the removal of the attachment, but their application was rejected. They then sued for a declaration of their right to two-thirds of the property. The District Judge, who tried the suit, rejected it on the ground that it was barred by Act I. of 1877, s. 42, because the plaintiffs might have sought further relief than a mere declaration of title, and omitted to do so. He was of opinion that the attachment constituted a dispossession, and that the plaintiffs might have asked to be replaced in possession, or, at any rate, for the removal of the attachment. *Held* by the High Court on appeal that the plaint was not open to objection on the ground that it only asked for a declaratory decree, without any consequential relief; that the prohibitory order to D did not constitute a dispossession of D, and still less of the plaintiffs; and that they could not have properly asked for removal of the attachment by a cancellation of the prohibitory order to D so long as they admitted that D had an interest in the attached property; and also that the plaintiffs could not have properly asked for any consequential relief in their suit, but that, when they instituted it, they were entitled, and, indeed, bound to ask for a declaration of their right, if only to prevent a purchaser at the sale, under the defendant's decree against D, from afterwards alleging that he had purchased without notice of the plaintiff's claim.—*Narayanrao Dāmodar Dābhalkar v. Dākrishna Mahadeo Gadre*, I. L. R., 4 Bom. 529.

THE proclamation of sale required, by s. 274 of the Civil Procedure Code, to be made at some place adjacent to the property to be sold, and the fixing up of a copy of the order in a conspicuous part of the property, are acts which must precede the posting of the notices in the Court-house as required by s. 290. Where the sale-proceeds of a portion of several parcels of property are sufficient to satisfy the decree of a judgment-creditor who has attached the property, another judgment-creditor, although he has not attached the property, is still entitled to have the remainder of the property sold to satisfy his decree under the provisions of s. 295 of the Civil Procedure Code. Three mouzas were attached in execution of decrees obtained by A and B. Prior to the sale, C, who had also obtained a decree against the owner of the land, applied for leave to execute his decree, in order that he might participate in the sale-proceeds under s. 295 of the Civil Procedure Code. Upon the day fixed for the sale, the Deputy Commissioner was unable, through illness, to at-

tend ; and he postponed the sale for three days. Two of the mouzas were sold, and realized more than enough to satisfy the decrees of A and B. The third was then sold in satisfaction of C's decree. Upon an application by the judgment-debtor to set aside the sale on the ground of irregularity, it appeared that notice of the sale had been posted in the Court-house more than thirty days before the date fixed for the sale, but had only been published on the properties to be sold five days before that date ; that notice of the existence of a mortgage on the properties, but no further particulars, was given, and the mortgagee was allowed to purchase ; and that the Deputy Commissioner had accepted the reports of the Nazir and Court-peon as to the proclamation of sale, and had refused to allow the judgment-debtor to give evidence of its insufficiency. *Held* that the proclamation of sale on the property having taken place only five days prior to the date of sale, and the particulars of the mortgage not having been given, there had been such material irregularities in the publication as to entitle the judgment-debtor to give evidence of them and the other allegations made by him, in order to show that he had suffered material injury by reason of such irregularities. *Held* also that the Deputy Commissioner was not entitled to proceed upon the reports of the Nazir and Court-peon, but was bound to hear the evidence tendered by the judgment-debtor, though he was justified, under s. 291, in postponing the sale as he had done. *Held*, further, that the third judgment-creditor, who had not attached the property, was still entitled to have the sale proceeded with, and his decree satisfied under the provisions of s. 295.—*Mohunt Megh Lal Poorce v. Shib Pershad Madi*, I. L. R., 7 Cal. 34.

275. If the amount decreed with costs and all charges and expenses resulting from the attachment of any property be paid into Court, or if satisfaction of the decree be otherwise made through the Court, or if the decree is set aside or reversed, an order shall be issued, on the application of any person interested in the property, for the withdrawal of the attachment.

THE above section applies to M. S. C. C. and P. S. C. C.

276. When an attachment has been made by actual seizure or by written order duly intimated and made known in manner aforesaid, any private alienation of the property attached, whether by sale, gift, mortgage, or otherwise, and any payment of the debt or dividend, or a delivery of the share, to the judgment-debtor during the continuance of the attachment, shall be void as against all claims enforceable under the attachment.

THE above section applies to M. S. C. C. and P. S. C. C.

AN attaching creditor has not, as such, any right to redeem a mortgage subsisting prior to his attachment.—*Soobhul Chunder Paul v. Nitye Churn Bysack*, I. L. R., 6 Cal. 664.

A SUIT on a mortgage foreclosed under Reg. XVII. of 1806, s. 8, comprising property attached before the date of the mortgage under s. 81 and the following sections of Act VIII. of 1859, was brought against the purchaser of the attached property, which had been sold under the decree obtained by the attaching creditor. The defence was, that the mortgage, falling within the provisions of s. 240 of the Act, was void as against the attaching creditor and those claiming under him. For the mortgagee it was contended that the attachment could not prevail, it not having been proved affirmatively that the requirements of s. 239, relating to the intimation of the attachment, had been complied with. *Held* that this objection to the validity of the attachment could not be raised for the first time on this appeal, even if it was not rather for the mortgagee, seeking to deprive the attaching creditor of his possession, to prove the non-observance of the formalities in question. *Semble*.—A re-attachment of property after decree does not imply an abandonment of an attachment obtained before decree.—*Ramkrishna Das Surrowji v. Surfunnissa Begum*, I. L. R., 6 Cal. 129.

277. If the property attached is coin or currency-notes, the Court may, at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the decree, be paid over to the party entitled under the decree to receive the same.

THE above section applies to M. S. C. C. and P. S. C. C.

278. If any claim be preferred to, or any objection be made to the attachment of, any property attached in execution of a decree, on the ground that such property is not liable to such attachment, the Court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit:

Provided that no such investigation shall be made where the Court considers that the claim or objection was designedly or unnecessarily delayed.

If the property to which the claim or objection applies has been advertised for sale, the Court ordering the sale may postpone it pending the investigation of the claim or objection.

THE above section applies to M. S. C. C. and P. S. C. C.

UNDER ss. 289 and 274 of the Civil Procedure Code, it is necessary that a copy of the sale-proclamation should be affixed to some conspicuous place on the property attached; and the omission to do so is a material irregularity within the meaning of s. 311 of the Code of Civil Procedure. If it is proved that the price obtained for property sold at an execution-sale is greatly inadequate, and if it be also proved that there has been a material irregularity in publishing or conducting the sale, the Court will presume that the irregularity was the cause of the inadequacy of price, until proof is given to the contrary.—*Kalyata Chowdharin v. Ramcoomar Goopta*, I. L. R., 7. Cal. 466.

AN objection was made to the attachment of certain property in the execution of a decree by the judgment-debtor, on the ground that such property was in his possession, not as his own property, but on account of an endowment. This objection was one of the nature to be dealt with under Act X. of 1877, s. 278 and the following sections. The Court executing the decree made an order against the decree-holder releasing the property from attachment: *Held* that such order was not appealable, the fact that the objection was made by the judgment-debtor notwithstanding, and the decree-holder's proper remedy was to institute a suit under Act X. of 1877, s. 283.—*Shankar Dial v. Amir Haidar*, I. L. R., 2 All. 752.

A DECREE-HOLDER, by a prohibitory order issued under Act X. of 1877, s. 268, attached a debt due to his judgment-debtor. This person, served with the order, applied, under s. 278, to have the attachment removed. *Held* that the application could not be entertained under s. 278, that section having no application to the case; but that, before issuing a proclamation of sale, in execution of a decree, of the debt so attached, it is the duty of the Court, under s. 287, to ascertain all that the Court considers it material for the intending purchaser to know in order to judge of the nature and value of the property proclaimed for sale. If the property, of which sale is sought, is a debt, and the Court receives notice from the alleged debtor that no debt exists, the Court should satisfy itself as to the existence, or otherwise, of the debt, and, if it comes to the conclusion that no debt exists, should abstain from proceeding to sale.—*Harilal Amthabhai v. Abhesang Meru*, I. L. R., 4 Bom. 323.

THE holders of a taluq hypothecated certain other property belonging to them as security for the rent. A decree for rent was obtained against them. Prior to attachment, the taluqdars assigned their interest in eight annas of the hypothecated

property to A, and made a mourosi lease of the remaining eight annas to him. The decree-holder then obtained an order for summary sale for the rent due for 1876-77. She then attempted to sell the property hypothecated to her. An objection by A was allowed. A regular suit was then instituted by the decree-holder against A, and it was declared that she was, after selling the taluq, entitled to sell the hypothecated property. The decree-holder again attempted to execute her rent-decree by attaching and selling the hypothecated property, and an objection by A was disallowed. *Held* that no appeal lay from the order disallowing the objection, as A could not be considered to be a 'representative' of the taluqdars within the meaning of s. 244, cl. c, of the Civil Procedure Code, and was, therefore, debarred from appealing under ss. 278 and 283.—*Rashbehary Mookhopadhya v. Maharani Surnomoyee*, I. L. R., 7 Cal. 403.

279. The claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of, the property attached.

Evidence to be adduced by claimant.

THE above section applies to M. S. C. C. and P. S. C. C.

280. If, upon the said investigation, the Court is satisfied that, for the reason stated in the claim or objection, such property was not, when attached, in the possession of the judgment-debtor or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the judgment-debtor at such time, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Court shall pass an order for releasing the property, wholly or to such extent as it thinks fit, from attachment.

Release of property from attachment.

THE above section applies to M. S. C. C. and P. S. C. C.

SECTION 283 of the Civil Procedure Code enables a party, against whom an order has been made in execution-proceedings, to bring a suit to establish his rights, whatever they may be; but it says nothing as to the nature of the suit, or the Court in which it is to be brought. Whether the party is to sue in the Civil Court, or in the Small Cause Court, depends entirely upon the nature of the claim and the right which is sought to be enforced. Where goods have been illegally seized and sold in execution, a suit by the owner thereof against the purchaser for the goods or their value will lie in a Small Cause Court, if the value of the goods is within the amount limited by law for the jurisdiction of such Court; but if the plaintiff makes the decree-holder and the judgment-debtor parties to the suit, and requires a declaration of his right to the property, such a suit will not lie in the Small Cause Court. A suit for a declaration of right by a person against whom an order has been passed under s. 280 of the Civil Procedure Code will not lie in the Small Cause Court.—*Shiboo Narain Singh v. Mudden Ally*, and *Natabor v. Kalidass Pal*, I. L. R., 7 Cal. 608.

281. If the Court is satisfied that the property was, at the time it was attached, in possession of the judgment-debtor as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in occupancy of a tenant or other person paying rent to him, the Court shall disallow the claim.

Disallowance of claim to release of property attached.

THE above section applies to P. S. C. C.

SECTION 283 of the Civil Procedure Code enables a party, against whom an order has been made in execution-proceedings, to bring a suit to establish his rights, whatever they may be; but it says nothing as to the nature of the suit, or the Court in which it is to be brought. Whether the party is to sue in the Civil Court, or in the Small Cause Court, depends entirely upon the nature of the claim and the right which is sought to be enforced. Where goods have been illegally seized and sold in execution, a suit by the owner thereof against the purchaser for the goods or their value will lie in a Small Cause Court, if the value of the goods is within the amount limited by law for the jurisdiction of such Court; but if the plaintiff makes the decree-holder and the judgment-debtor parties to the suit, and requires a declaration of his right to the property, such a suit will not lie in the Small Cause Court. A suit for a declaration of right by a person against whom an order has been passed under s. 280 of the Civil Procedure Code will not lie in the Small Cause Court.—*Shiboo Narain Singh v. Mudden Ally*, and *Natabor v. Kalidass Pal*, I. L. R., 7 Cal. 608.

282. If the Court is satisfied that the property is subject to a mortgage or lien in favour of some person not in possession, and thinks fit to continue the attachment, it may do so, subject to such mortgage or lien.

Continuance of attachment subject to claim of incumbrancer.

THE above section applies to P. S. C. C.

AN attaching creditor has not, as such, any right to redeem a mortgage subsisting prior to his attachment.—*Soobhul Chunder Paul v. Nitye Churn Bysack*, I. L. R., 6 Cal. 664.

283. The party against whom an order under section 280, 281, or 282, is passed, may institute a suit to establish the right which he claims to the property in dispute, but, subject to the result of such suit (if any), the order shall be conclusive.

Saving of suits to establish right to attached property.

THE above section applies to M. S. C. C. (so far as relates to moveable property), and to P. S. C. C.

A SUIT brought by a defeated claimant, under Act X. of 1877, s. 283, to establish his right to, and to recover possession of, certain moveable property attached in execution of a decree of a Small Cause Court, is within the jurisdiction of, and must therefore, under Act XI. of 1865, s. 12, be instituted in, a Small Cause Court.—*Gordhan Pema v. Kasandás Balmukundás*, I. L. R., 3 Bom. 179.

IN a suit, under Act X. of 1877, s. 283, for a declaration of her proprietary right to certain immoveable property attached in the execution of a decree, the plaintiff asked that the property might be "protected from sale." Held that consequential relief was claimed in the suit, and court-fees were therefore leviable under Act VII. of 1870, s. 7, cl. 4 (c), and not under sch. 2, art. 17 (iii).—*Ram Prasad v. Sukh Dai*, I. L. R., 2 All. 720 (F. B.).

AN objection was made to the attachment of certain property in the execution of a decree by the judgment-debtor, on the ground that such property was in his possession, not as his own property, but on account of an endowment. This objection was one of the nature to be dealt with under Act X. of 1877, s. 278 and the following sections. The Court executing the decree made an order against the decree-holder releasing the property from attachment: Held that such order was not appealable, the fact that the objection was made by the judgment-debtor notwithstanding, and the decree-holder's proper remedy was to institute a suit under Act X. of 1877, s. 283.—*Shankar Dial v. Amir Haidar*, I. L. R., 2 All. 752.

SECTION 283 of the Civil Procedure Code enables a party, against whom an order has been made in execution-proceedings, to bring a suit to establish his rights, whatever they may be; but it says nothing as to the nature of the suit, or the Court in which it is to be brought. Whether the party is to sue in the Civil Court, or in the

Small Cause Court, depends entirely upon the nature of the claim and the right which is sought to be enforced. Where goods have been illegally seized and sold in execution, a suit by the owner thereof against the purchaser for the goods or their value will lie in a Small Cause Court, if the value of the goods is within the amount limited by law for the jurisdiction of such Court; but if the plaintiff makes the decree-holder and the judgment-debtor parties to the suit, and requires a declaration of his right to the property, such a suit will not lie in the Small Cause Court. A suit for a declaration of right by a person against whom an order has been passed under s. 280 of the Civil Procedure Code will not lie in the Small Cause Court.—*Shiboo Narain Singh v. Mudden Ally*, and *Natabor v. Kalidass Pal*, I. L. R., 7 Cal. 608.

THE holders of a taluq hypothecated certain other property belonging to them as security for the rent. A decree for rent was obtained against them. Prior to attachment, the taluqdárs assigned their interest in eight annas of the hypothecated property to A, and made a mourosi lease of the remaining eight annas to him. The decree-holder then obtained an order for summary sale for the rent due for 1876-77. She then attempted to sell the property hypothecated to her. An objection by A was allowed. A regular suit was then instituted by the decree-holder against A, and it was declared that she was, after selling the taluq, entitled to sell the hypothecated property. The decree-holder again attempted to execute her rent-decree by attaching and selling the hypothecated property, and an objection by A was disallowed. Held that no appeal lay from the order disallowing the objection, as A could not be considered to be a 'representative' of the taluqdárs within the meaning of s. 244, cl. c, of the Civil Procedure Code, and was, therefore, debarred from appealing under ss. 278 and 283.—*Rashbehary Mookhopadhyaya v. Maharani Surnomoyee*, I. L. R., 7 Cal. 403.

284. Any Court may order that any property which has been

Power to order property attached to be sold and proceeds to be paid to person entitled.

attached, or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

THE above section applies to M. S. C. C. (so far as relates to moveable property), and to P. S. C. C.

285. Where property not in the custody of any Court has been

Property attached in execution of decrees of more Courts than one, the Court which shall receive or realize such property, and shall determine any claim thereto and any objection to the attachment thereof, shall be the Court of highest grade, or, where there is no difference in grade between such Courts, the Court under whose decree the property was first attached.

Property attached in execution of decrees of more Courts than one, the Court which shall receive or realize such property, and shall determine any claim thereto and any objection to the attachment thereof, shall be the Court of highest grade, or, where there is no difference in grade between such Courts, the Court under whose decree the property was first attached.

THE above section applies to M. S. C. C. (so far as relates to re-sales under s. 297), and to P. S. C. C.

A, who had obtained a decree in the Court of the Second Munsif of B, in September 1877, attached certain property within the jurisdiction which had been assigned to the Munsif by the District Judge under s. 18 of Act VI. of 1871. In the previous month, C, who had obtained a decree in the Court of the Additional Munsif of B (to whom jurisdiction had similarly been assigned), had attached the same property. The sale in execution of A's decree took place first, and A became the purchaser. A then objected in the Court of the Additional Munsif that the property could not again be sold; but his objection was over-ruled, and, two days subsequently, the property was again put up for sale in execution of C's decree, and he became the purchaser. A brought various suits against the tenants for arrears of

rent, in which C intervened. *Held* that the jurisdictions of the Munsifs were confined to the particular limits assigned to them, and that, as the property was situate within the limits assigned to the Second Munsif, the Additional Munsif had no jurisdiction to attach or sell it, and that the attachment by C was made improperly and without jurisdiction. *Quære*.—Whether s. 285 of the Civil Procedure Code applies to immoveable property.—*Obhoy Churn Coondoo v. Golam Ali alias Nocury Meah*, I. L. R., 7 Cal. 410.

CERTAIN immoveable property was attached in execution of a decree made by a Subordinate Judge, and also in execution of a decree made by a Munsif. These decrees were held by the same person, and the judgment-debtor was the same person. Such property was sold in execution of both decrees. On the application of the judgment-debtor, who brought into Court the amount due on the decree made by the Subordinate Judge, and with the consent of the decree-holder and the auction-purchaser, the Subordinate Judge made an illegal order setting aside such sale. Subsequently, on the application of the decree-holder and the auction-purchaser, the Munsif made an order confirming such sale. *Per* Spankie, J.—That the Subordinate Judge had not any jurisdiction under s. 285 of the Civil Procedure Code to deal with such sale as regards the decree made by the Munsif, and the Munsif was not precluded by that section from confirming such sale as regards the decree made by him by reason that the Subordinate Judge, a Court of a higher grade, had made an order setting it aside.—*Per* Oldfield, J.—That, having regard to the provisions of that section, it was doubtful whether the Munsif was competent to confirm such sale; but, inasmuch as the Subordinate Judge only intended to set it aside as regards the decree made by him, and his order was illegal, and the Munsif's order had done substantial justice, there was no reason to interfere.—*Chunni Lal and others (Judgment-debtors) v. Debi Prasad and another (Auction-purchasers)*, J. L. R., 3 All. 356.

G.—Of Sale and Delivery of Property.

(a) General Rules.

286. Sales in execution of decrees shall be conducted by an officer of the Court or by any other person whom the Court may appoint, and, except as provided in section 296, shall be made by public auction in manner hereinafter mentioned.

The above section applies to M. S. C. C. (so far as relates to re-sales under s. 297), and to P. S. C. C.

287. When any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court. Such proclamation shall state the time and place of sale, and shall specify as fairly and accurately as possible—

- (a) the property to be sold;
- (b) the revenue assessed upon the estate or part of the estate, when the property to be sold is an interest in an estate or a part of an estate paying revenue to Government;
- (c) any incumbrance to which the property is liable;
- (d) the amount for the recovery of which the sale is ordered; and
- (e) every other thing which the Court considers material for the purchaser to know in order to judge of the nature and value of the property.

For the purpose of ascertaining the matters so to be specified, the Court may summon any person whom it thinks necessary, and examine him in respect to any such matters, and require him to produce any document in his possession or power relating thereto.

The High Court shall, as soon as may be after this Code comes into force, make rules for the guidance of the Courts in exercise of their duties under this section. The High Court may, from time to time, alter any rules so made. All such rules shall be published in the local official Gazette, and shall thereupon have the force of law. As regards his own Court and the Court of Small Causes at Rangoon, the Recorder of Rangoon shall be deemed to be a "High Court" within the meaning of this paragraph.

Nothing in this section shall apply to cases in which the execution of the decree has been transferred to the Collector.

THE above section applies to M. S. C. C. (so far as relates to re-sales under s. 297), and to P. S. C. C.

A DECREE-HOLDER, by a prohibitory order issued under Act X. of 1877, s. 268, attached a debt due to his judgment-debtor. This person, served with the order, applied, under s. 278, to have the attachment removed. *Held* that the application could not be entertained under s. 278, that section having no application to the case; but that, before issuing a proclamation of sale, in execution of a decree, of the debt so attached, it is the duty of the Court, under s. 287, to ascertain all that the Court considers it material for the intending purchaser to know in order to judge of the nature and value of the property proclaimed for sale. If the property, of which sale is sought, is a debt, and the Court receives notice from the alleged debtor that no debt exists, the Court should satisfy itself as to the existence, or otherwise, of the debt, and, if it comes to the conclusion that no debt exists, should abstain from proceeding to sale.—*Harilál Amthábhái v. Abhesang Meru*, I. L. R., 4 Bom. 323.

THE proclamation of sale required, by s. 274 of the Civil Procedure Code, to be made at some place adjacent to the property to be sold, and the fixing up of a copy of the order in a conspicuous part of the property, are acts which must precede the posting of the notices in the Court-house as required by s. 290. Where the sale-proceeds of a portion of several parcels of property are sufficient to satisfy the decree of a judgment-creditor who has attached the property, another judgment-creditor, although he has not attached the property, is still entitled to have the remainder of the property sold to satisfy his decree under the provisions of s. 295 of the Civil Procedure Code. Three mouzas were attached in execution of decrees obtained by A and B. Prior to the sale, C, who had also obtained a decree against the owner of the land, applied for leave to execute his decree, in order that he might participate in the sale-proceeds under s. 295 of the Civil Procedure Code. Upon the day fixed for the sale, the Deputy Commissioner was unable, through illness, to attend; and he postponed the sale for three days. Two of the mouzas were sold, and realized more than enough to satisfy the decrees of A and B. The third was then sold in satisfaction of C's decree. Upon an application by the judgment-debtor to set aside the sale on the ground of irregularity, it appeared that notice of the sale had been posted in the Court-house more than thirty days before the date fixed for the sale, but had only been published on the properties to be sold five days before that date; that notice of the existence of a mortgage on the properties, but no further particulars, was given, and the mortgagee was allowed to purchase; and that the Deputy Commissioner had accepted the reports of the Nazir and Court-peon as to the proclamation of sale, and had refused to allow the judgment-debtor to give evidence of its insufficiency. *Held* that the proclamation of sale on the property having taken place only five days prior to the date of sale, and the particulars of the mortgage not having been given, there had been such material irregularities in the publication as to entitle the judgment-debtor to give evidence of them and the other allegations made by him, in order to show that he had suffered material injury by reason of such irregularities. *Held* also that the Deputy Commissioner was not entitled to proceed upon the reports of the Nazir and Court-peon, but was bound to hear the evidence tendered by the judgment-debtor, though he was justified, under s. 291, in postponing the sale as he had done. *Held*, further, that the third judgment-creditor, who had not attached the property, was still entitled to have the sale proceeded with, and his decree satisfied under the provisions of s. 295.—*Mohunt Megh Lal Pooree v. Shib Pershad Madi*, I. L. R., 7 Cal. 34.

288. No Judge or other public officer shall be answerable for any error, misstatement, or omission in any proclamation under section 287, unless the same has been committed or made dishonestly.

The above section applies to M. S. C. C. (so far as relates to re-sales under s. 297), and to P. S. C. C.

289. The proclamation shall be made, in manner prescribed by section 274, (on the spot where the property is attached) and a copy thereof shall then be fixed up in the Court-house and, in the case of land paying revenue to Government, also in the Collector's office.

If the Court so direct, such proclamation shall also be published in the local official Gazette and in some local newspaper, and the costs of such publication shall be deemed to be costs of the sale.

The above section applies to M. S. C. C. (so far as relates to re-sales under s. 297), and to P. S. C. C.

UNDER ss. 289 and 274 of the Civil Procedure Code, it is necessary that a copy of the sale-proclamation should be affixed to some conspicuous place on the property attached; and the omission to do so is a material irregularity within the meaning of s. 311 of the Code of Civil Procedure. If it is proved that the price obtained for property sold at an execution-sale is greatly inadequate, and if it be also proved that there has been a material irregularity in publishing or conducting the sale, the Court will presume that the irregularity was the cause of the inadequacy of price, until proof is given to the contrary.—*Kalytara Chowdharin v. Ramcoomar Goopta*, I. L. R., 7 Cal. 466.

THE proclamation of sale required, by s. 274 of the Civil Procedure Code, to be made at some place adjacent to the property to be sold, and the fixing up of a copy of the order in a conspicuous part of the property, are acts which must precede the posting of the notices in the Court-house as required by s. 290. Where the sale-proceeds of a portion of several parcels of property are sufficient to satisfy the decree of a judgment-creditor who has attached the property, another judgment-creditor, although he has not attached the property, is still entitled to have the remainder of the property sold to satisfy his decree under the provisions of s. 295 of the Civil Procedure Code. Three mouzas were attached in execution of decrees obtained by A and B. Prior to the sale, C, who had also obtained a decree against the owner of the land, applied for leave to execute his decree, in order that he might participate in the sale-proceeds under s. 295 of the Civil Procedure Code. Upon the day fixed for the sale, the Deputy Commissioner was unable, through illness, to attend; and he postponed the sale for three days. Two of the mouzas were sold, and realized more than enough to satisfy the decrees of A and B. The third was then sold in satisfaction of C's decree. Upon an application by the judgment-debtor to set aside the sale on the ground of irregularity, it appeared that notice of the sale had been posted in the Court-house more than thirty days before the date fixed for the sale, but had only been published on the properties to be sold five days before that date; that notice of the existence of a mortgage on the properties, but no further particulars, was given, and the mortgagee was allowed to purchase; and that the Deputy Commissioner had accepted the reports of the Nazir and Court-peon as to the proclamation of sale, and had refused to allow the judgment-debtor to give evidence of its insufficiency. *Held* that the proclamation of sale on the property having taken place only five days prior to the date of sale, and the particulars of the mortgage not having been given, there had been such material irregularities in the publication as to entitle the judgment-debtor to give evidence of them and the other allegations made by him, in order to show that he had suffered material injury by reason of such irregularities. *Held* also that the Deputy Commissioner was not entitled to proceed upon the reports of the Nazir and Court-peon, but was bound to hear the evidence tendered by the judgment-debtor, though he was justified, under

s. 291, in postponing the sale as he had done. *Held*, further, that the third judgment-creditor, who had not attached the property, was still entitled to have the sale proceeded with, and his decree satisfied under the provisions of s. 295.—*Mohunt Megh Lall Pooree v. Shib Pershad Madi*, I. L. R., 7 Cal. 34.

290. Except in the case of property mentioned in the proviso to section 269, no sale under this chapter shall,

Time of sale. without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days in the case of immoveable property, and of at least fifteen days in the case of moveable property calculated from the date on which the copy of the proclamation has been fixed up in the Court-house of the Judge ordering the sale.

THE above section applies to M. S. C. C. (so far as relates to re-sales under s. 297), and to P. S. C. C.

CERTAIN immoveable property was, on the 15th February 1879, notified for sale under a decree of a Civil Court on 15th March following, so that only 29, instead of 30, days elapsed between the day of the sale and the notification. The sale having taken place, the execution-debtor applied to the Deputy Commissioner to set it aside upon the ground that the sale was illegal, the requirements of Act X. of 1877, s. 290, being essential to its validity. Upon that ground the sale was set aside as illegal by the Deputy Commissioner. On appeal, the Judicial Commissioner reversed this decision, on the ground that the fact of the sale having taken place 29 instead of 30 days after the notification was merely an irregularity, and that, as the execution-debtor had not shown that he had suffered any damage from the irregularity, the sale ought to be confirmed. An application was then made to a Division Bench of the High Court to set aside the order of the Judicial Commissioner confirming the sale, upon the ground that it was manifestly erroneous; and the Division Bench referred the question to a Full Bench: Whether, assuming the requirements of s. 290 to be essential to the validity of a sale, the High Court had any power, either under 24 and 25 Vic., c. 105, s. 15, or Act X. of 1877, s. 622, as amended, to set aside the Judicial Commissioner's order: *Held* by the Full Bench, without answering the question referred, that, assuming the requirements of s. 290 to be essential, the High Court had a right, under its summary powers, to set aside the sale itself, notwithstanding (and apart from the question whether it would set aside) the order of the Judicial Commissioner.—*In re Bhekraj Keori*, I. L. R., 5 Cal. 878 (F. B.).

291. The Court may, in its discretion, adjourn any sale under this chapter (other than a sale by the Collector) to

Power to adjourn sale. a specified day and hour, and the officer conducting any such sale may, in his discretion, adjourn the sale, recording his reasons for such adjournment: Provided that when the sale is made in, or within the precincts of, the Court-house, no such adjournment shall be made without the leave of the Court. Whenever a sale is adjourned under this section for a longer period than seven days, a fresh proclamation under section 289 shall be made, unless the judgment-debtor

consents to waive it. Every such sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to such officer, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the Court that ordered the sale.

THE above section applies to M. S. C. C. (so far as relates to re-sales under s. 297), and to P. S. C. C.

THE proclamation of sale required, by s. 274 of the Civil Procedure Code, to be made at some place adjacent to the property to be sold, and the fixing up of a copy of the order in a conspicuous part of the property, are acts which must precede the posting of the notices in the Court-house as required by s. 290. Where the sale-proceeds of a portion of several parcels of property are sufficient to satisfy the decree of a judgment-creditor who has attached the property, another judgment-creditor, although he has not attached the property, is still entitled to have the remainder of the property sold to satisfy his decree under the provisions of s. 295 of the Civil Procedure Code. Three mouzas were attached in execution of decrees obtained by A and B. Prior to the sale, C, who had also obtained a decree against the owner of the land, applied for leave to execute his decree, in order that he might participate in the sale-proceeds under s. 295 of the Civil Procedure Code. Upon the day fixed for the sale, the Deputy Commissioner was unable, through illness, to attend; and he postponed the sale for three days. Two of the mouzas were sold, and realized more than enough to satisfy the decrees of A and B. The third was then sold in satisfaction of C's decree. Upon an application by the judgment-debtor to set aside the sale on the ground of irregularity, it appeared that notice of the sale had been posted in the Court-house more than thirty days before the date fixed for the sale, but had only been published on the properties to be sold five days before that date; that notice of the existence of a mortgage on the properties, but no further particulars, was given, and the mortgagee was allowed to purchase; and that the Deputy Commissioner had accepted the reports of the Nazir and Court-peon as to the proclamation of sale, and had refused to allow the judgment-debtor to give evidence of its insufficiency. *Held* that the proclamation of sale on the property having taken place only five days prior to the date of sale, and the particulars of the mortgage not having been given, there had been such material irregularities in the publication as to entitle the judgment-debtor to give evidence of them and the other allegations made by him, in order to show that he had suffered material injury by reason of such irregularities. *Held* also that the Deputy Commissioner was not entitled to proceed upon the reports of the Nazir and Court-peon, but was bound to hear the evidence tendered by the judgment-debtor, though he was justified, under s. 291, in postponing the sale as he had done. *Held*, further, that the third judgment-creditor, who had not attached the property, was still entitled to have the sale proceeded with, and his decree satisfied under the provisions of s. 295.—*Mohunt Megh Lal Poorce v. Shih Pershad Madi*, I. L. R., 7 Cal. 34.

292. No officer having any duty to perform in connection with any

Officers concerned in execution-sales not to bid for or buy property sold.

sale under this chapter shall, either directly or indirectly, bid for, acquire, or attempt to acquire, any interest in any property sold at such sale.

THE above section applies to M. S. C. C. (so far as relates to re-sales under s. 297), and to P. S. C. C.

293. The deficiency of price (if any) which may happen on a re-

Defaulting purchaser answerable for loss by re-sale.

sale under this Code by reason of the purchaser's default, and all expenses attending such re-sale, shall be certified to the Court by the officer holding the sale,

and shall, at the instance of either the judgment-creditor or the judgment-debtor, be recoverable from the defaulter under the rules contained in this chapter for the execution of a decree for money.

THE above section applies to M. S. C. C. (so far as relates to re-sales under s. 297), and to P. S. C. C.

THE provisions of s. 293, Act X. of 1877 (Civil Procedure Code), for making a defaulting purchaser at a sale liable for any deficiency on a resale, extend to all sales, whether of moveable or immoveable property, and also to resales held under ss. 297, 306, and 308.—*Ramdhani Sahai v. Rajrani Koorer*, I. L. R., 7 Cal. 337.

Decree-holder not to bid for or buy property without permission.

294. No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property.

When a decree-holder purchases with such permission, the purchase-money and the amount due on the decree may, if the decree-holder purchase, amount of decree may be taken as payment, if he so desires, be set-off against one another, and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.

When a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person interested in the sale, by order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the resale, and all expenses attending it, shall be paid by the decree-holder.

THE above section applies to M. S. C. C. and P. S. C. C.

A PURCHASE by the son of a decree-holder, undivided in interest from his father, is a purchase by the decree-holder within the meaning of s. 294 of Act X. of 1877 as it stood previously to its amendment by Act XII. of 1879, and is absolutely void, if the purchase were made with funds which were the joint property of the father and son. In the absence of evidence to the contrary, the legal presumption would be that the funds were joint-property.—*Naráyan Deshpánde* (Original Applicant), Appellant, v. *Anáji Deshpánde* (Original Opponent), Respondent, I. L. R., 5 Bom. 130.

THE holder of a decree, in execution of which property is sold, is absolutely bound under Act X. of 1877, s. 294, to have express permission from the Court before he can purchase the property; and whether this objection is taken and pressed or otherwise, a sale to him is invalid, unless he has got explicit permission. The use, at a sale, of language by an intending bidder in disparagement of the property for the purpose of influencing bystanders, and deterring them from bidding for the property, is a "material irregularity," sufficient to render the sale invalid, under s. 311 of the same Act.—*Rukhinee Bullubh v. Brojonath Sircar*, I. L. R., 5 Cal. 308.

295. Whenever assets are realized by sale or otherwise in execution

Proceeds of execution-sale of a decree, and more persons than one have, to be divided rateably prior to the realization, applied to the Court by among decree-holders, which such assets are held for execution of decrees for money against the same judgment-debtor, and have not obtained satisfaction thereof, the assets, after deducting the costs of the realization, shall be divided rateably among all such persons :

Provided as follows :—

(a) when any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer shall not as such be sold subject to mortgage, entitled to share in any surplus arising from such sale :

(b) when any property liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the assent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same right against the proceeds of the sale as he had against the property sold :

(c) when immoveable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied—

Proviso. first, in defraying the expenses of the sale ;
secondly, in discharging the interest and principal-money due on the incumbrance ;

thirdly, in discharging the interest and principal-moneys due on subsequent incumbrances (if any) ; and

fourthly, rateably among the holders of decrees for money against the judgment-debtor, who have, prior to the sale of the said property, applied to the Court which made the decree ordering such sale for execution of such decrees and have not obtained satisfaction thereof.

If all or any of such assets be paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

Nothing in this section affects any right of the Government.

THE above section applies to M. S. C. C. and P. S. C. C.

AN attaching creditor has not, as such, any right to redeem a mortgage subsisting prior to his attachment.—*Soobhul Chunder Paul v. Nitye Churn Bysack*, I. L. R., 6 Cal. 664.

HELD that ss. 266 and 295 must be read together, and that an ordinary judgment-creditor is not entitled, under s. 295, to a rateable proportion of the assets realized by the sale of such house or building, under a decree obtained by another creditor for rent due to him in respect of the said house or building.—*Mániklal Venilál v. Lakha and Mánsing*, I. L. R., 4 Bom. 429.

MONEYS paid into Court by sale or otherwise in execution of a decree are assets from the moment of their payment into Court, and are available, under s. 295 of the Code of Civil Procedure (Act X. of 1877), for rateable distribution only amongst decree-holders who have applied for execution prior to that time.—*Vishvanáth Máhesh Var (Applicant) v. Virchand Pánáchand and others (Opponents)*, I. L. R., 6 Bom. 16

THE purport of Act VIII. of 1859, ss. 270 and 271 (corresponding with Act X. of 1877, s. 295), is not to alter or limit the rights of parties arising out of a contract, but simply to determine questions between rival decree-holders standing on the same footing, and in respect of whom there is no rule for otherwise determining the mode in which proceeds of property brought to sale (in execution of decree) shall be distributed.—*Hasoon Arra Begum v. Jawadoonissa Satooda Khandan*, I. L. R., 4 Cal. 29.

A JUDGMENT-CREDITOR in execution of his decree attached certain property belonging to his judgment-debtor while Act VIII. of 1859 was in force. This property was ultimately sold on the 9th January 1879, i.e., after Act X. of 1877 came into operation. Two days before the sale, another judgment-creditor applied to have his decree satisfied out of the same property by a rateable distribution of the proceeds which might be realized. *Held* that the prior attaching creditor by his attachment under Act VIII. of 1859 acquired, under s. 270 of that Act, a right to have his decree first satisfied in full, and that he was not deprived of this right by the change in the law introduced by Act X. of 1877, s. 295.—*Narandás v. Báí Manchha*, I. L. R., 3 Bom. 217.

CERTAIN moveable property was attached in execution of decrees of the Small Cause Court at Ahmedabad. After the attachment, but before the sale of the attached property, other creditors of the same judgment-debtor obtained decrees against him in the Court of the Subordinate Judge at the same place, and applied to it for the attachment of the same property in execution of their decrees. The

Subordinate Judge, accordingly, attached it by prohibitory orders issued to the Judge of the Small Cause Court. After the sale, the holders of the decrees obtained in the Subordinate Judge's Courts claimed a rateable share in the assets realized by the Small Cause Court, under Act X. of 1877, s. 295. *Held* that they were not entitled to any share in the assets until after satisfaction of the decrees of the Small Cause Court.—*Jetha Mádhowji v. Najerali Abrahamji*, I. L. R., 4 Bom. 472.

ONE Maniklal obtained a decree against L and M for rent due from them, and, in execution thereof, applied for the attachment and sale of two houses, with their compounds and the ground underneath them (in respect of which property the said rent had fallen due), belonging, respectively, one to each of his judgment-debtors. The properties were, accordingly, sold on 23rd July 1879, and the sale-proceeds handed over to Maniklal. In the meantime, on the 18th February 1879, D, a judgment-creditor of M under a money-decree, applied for the attachment and sale of the same immoveable property (excepting the houses) of his judgment-debtor, which had been previously attached under Maniklal's decree for rent. On the realization of the sale-proceeds, D applied, under Act X. of 1877, s. 295, for a rateable proportion of the assets realized by the sale of M's property in execution of Maniklal's decree. *Held* that D was not entitled to such rateable proportion of the assets.—*Maniklal Venilal v. Lakha and Mansing*, I. L. R., 4 Bom. 429.

THE salary of a kárkún, who was employed in the Second Class Subordinate Judge's Court of Anklesvar, was attached, in execution of a decree of the First Class Subordinate Judge's Court of Surat, by an order issued by the S. rat Court, directing the Anklesvar Court to stop and remit, every month, a moiety of the said kárkún's salary to itself (the Surat Court) until satisfaction of the decree. While the decree of the Surat Court was thus in course of execution, another judgment-creditor of the kárkún, who had obtained a decree in the Anklesvar Court, applied to it for a rateable distribution of the moiety between himself and the Surat decree-holder, under s. 295 of the Civil Procedure Code, Act X. of 1877. *Held* that the application was not sustainable, inasmuch as the decree of the Surat Court was being executed by itself, and not by the Anklesvar Court, to which the order of attachment was sent as the head of a department, or as "the officer whose duty it was to disburse the salary," and not as the Court executing the decree of another Court.—*Jetha Madhavji v. Najerali Abramji* (I. L. R., 4 Bom. 472) followed.—*Krishnashankar* (Decree-holder) *v. Chandráshankar* (Judgment-debtor), I. L. R., 5 Bom. 198.

In execution of a decree of a Munsif's Court, the plaintiff attached certain money, the proceeds of decrees which her judgment-debtor had obtained against third parties, then lying in a Small Cause Court to her credit, and subsequently obtained an order from the Munsif directing the same to be paid to her in satisfaction of her decree, which order was duly communicated to the Small Cause Court Judge. Subsequently, the defendant, who held another decree against the same judgment-debtor, attached the same sale-proceeds. The Small Cause Court Judge then proceeded, under s. 272 of the Civil Procedure Code, to enquire whether the plaintiff was entitled to any priority over the second attaching creditor, and, having decided that question in the negative, divided the sale-proceeds rateably between them. In a suit brought by the plaintiff, under the above circumstances, to recover from the defendant the portion of the sale-proceeds so paid to him: *Held* that s. 295 of the Civil Procedure Code had no application, inasmuch as the plaintiff had not applied to the Small Cause Court Judge to execute her decree, and it had never been transferred to the Court for execution; and that the proviso in s. 272 is merely intended to mean that any question of title or priority is to be determined by the Court in which or in whose custody the property is, and not by the Court which made the order of attachment. *Held* also that, previous to the order by the Munsif directing the payment to be made to the plaintiff, the Small Cause Court Judge would have had jurisdiction to deal with the question he had tried; but as that order was made prior to the attachment by the defendant, the judgment-debtor had no interest in the money which could be so attached, the effect of that order being to vest the property in the money in the plaintiff, and to take it out of the disposal of the Small Cause Court Judge, and consequently the order for distribution was wrong, and the plaintiff was entitled to the decree she sought. *Quære*.—Whether an order made by a Court under s. 272 was intended by the Legislature to be a *res* order?—*Gopee Nath Acharjee v. Achcha Bibee*, I. L. R., 7 Cal. 553.

THE proclamation of sale required, by s. 274 of the Civil Procedure Code, to be made at some place adjacent to the property to be sold, and the fixing up of a copy of the order in a conspicuous part of the property, are acts which must precede the posting of the notices in the Court-house as required by s. 290. Where the sale-proceeds of a portion of several parcels of property are sufficient to satisfy the decree of a judgment-creditor who has attached the property, another judgment-creditor, although he has not attached the property, is still entitled to have the remainder of the property sold to satisfy his decree under the provisions of s. 295 of the Civil Procedure Code. Three mouzas were attached in execution of decrees obtained by A and B. Prior to the sale, C, who had also obtained a decree against the owner of the land, applied for leave to execute his decree, in order that he might participate in the sale-proceeds under s. 295 of the Civil Procedure Code. Upon the day fixed for the sale, the Deputy Commissioner was unable, through illness, to attend; and he postponed the sale for three days. Two of the mouzas were sold, and realized more than enough to satisfy the decrees of A and B. The third was then sold in satisfaction of C's decree. Upon an application by the judgment-debtor to set aside the sale on the ground of irregularity, it appeared that notice of the sale had been posted in the Court-house more than thirty days before the date fixed for the sale, but had only been published on the properties to be sold five days before that date; that notice of the existence of a mortgage on the properties, but no further particulars, was given, and the mortgagee was allowed to purchase; and that the Deputy Commissioner had accepted the reports of the Nazir and Court-peon as to the proclamation of sale, and had refused to allow the judgment-debtor to give evidence of its insufficiency. *Held* that the proclamation of sale on the property having taken place only five days prior to the date of sale, and the particulars of the mortgage not having been given, there had been such material irregularities in the publication as to entitle the judgment-debtor to give evidence of them and the other allegations made by him, in order to show that he had suffered material injury by reason of such irregularities. *Held* also that the Deputy Commissioner was not entitled to proceed upon the reports of the Nazir and Court-peon, but was bound to hear the evidence tendered by the judgment-debtor, though he was justified, under s. 291, in postponing the sale as he had done. *Held*, further, that the third judgment-creditor, who had not attached the property, was still entitled to have the sale proceeded with, and his decree satisfied under the provisions of s. 295.—*Mohunt Megh Lal Poorce v. Shib Pershad Miah*, I. L. R., 7 Cal. 34.

(b) *Rules as to Moveable Property.*

296. If the property to be sold be a negotiable instrument or a share in any public Company or Corporation, the Court may, instead of directing the sale to be made by public auction, authorize the sale of such instrument or share through a broker at the market-rate of the day.

THE above section applies to M. S. C. C. and P. S. C. C.

297. In the case of other moveable property, the price of each lot shall be paid for at the time of sale, or as soon after as the officer holding the sale directs, and, in default of payment, the property shall forthwith be again put up and sold.

On payment of the purchase-money, the officer holding the sale shall grant a receipt for the same, and the sale shall become absolute.

THE above section applies to M. S. C. C. and P. S. C. C.

THE provisions of s. 293, Act X. of 1877 (Civil Procedure Code), for making a selling purchaser at a sale liable for any deficiency on a resale, extend to all whether of moveable or immovable property, and also to resales held under 297, 306, and 308.—*Ramdhani Sahai v. Rajrani Koorer*, I. L. R., 7 Cal. 337.

298. No irregularity in publishing or conducting the sale of moveable property shall vitiate the sale; but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation, or (if such other person be the purchaser) for the recovery of the specific property, and for compensation in default of such recovery.

THE above section applies to M. S. C. C. and P. S. C. C.

299. When the property sold is a negotiable instrument or other moveable property of which actual seizure has been made, the property shall be delivered to the purchaser.

THE above section applies to M. S. C. C. and P. S. C. C.

300. When the property sold is any moveable property to which the judgment-debtor is entitled subject to the possession of some other person, the delivery thereof to the purchaser shall be made by giving notice to the person in possession, prohibiting him from delivering possession of the property to any person except the purchaser.

THE above section applies to M. S. C. C. and P. S. C. C.

301. When the property sold is a debt not secured by a negotiable instrument, or is a share in any public Company, the delivery thereof shall be made by a written order of the Court prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon, and the manager, secretary, or other proper officer of the Company from permitting any such transfer or making any such payment to any person except the purchaser.

THE above section applies to M. S. C. C. and P. S. C. C.

302. If the endorsement or conveyance of the party in whose name a negotiable instrument or a share in any public Company is standing is required to transfer such instrument or share, the Judge may endorse the instrument or the certificate of the share, or may execute such other document as may be necessary.

The endorsement or execution shall be in the following form or to the like effect :—“*A. B.*, by *C. D.*, Judge of the Court of (or as the case may be); in a suit by *E. F.* against *A. B.*”

Until the transfer of such instrument or share, the Court may, by order, appoint some person to receive any interest or dividend due thereon, and to sign a receipt for the same; and any endorsement made,

or document executed, or receipt signed, as aforesaid, shall be as valid and effectual for all purposes as if the same had been made or executed or signed by the party himself.

THE above section applies to M. S. C. C. and P. S. C. C.

303. In the case of any moveable property not hereinbefore provided for, the Court may make an order vesting order in case of other property. Vesting such property in the purchaser or as he may direct; and such property shall vest accordingly.

THE above section applies to M. S. C. C. and P. S. C. C.

(c) Rules as to Immoveable Property.

304. Sales of immoveable property in execution of a decree may be ordered by any Court other than a Court of Small Causes.
What Courts may order sales of land.

305. When an order for the sale of immoveable property has been made, if the judgment-debtor can satisfy the Court that there is reason to believe that the amount of the decree may be raised by mortgage or lease or private sale of such property, or some part thereof, or of any other immoveable property of the judgment-debtor, the Court may, on his application, postpone the sale of property comprised in the order for sale, for such period as it thinks proper, to enable him to raise the amount.
Postponement of sale of land to enable defendant to raise amount of decree.

In such case the Court shall grant a certificate to the judgment-debtor authorizing him, within a period to be mentioned therein, and notwithstanding anything contained in section 276, to make the proposed mortgage, lease, or sale: provided that all moneys payable under such mortgage, lease, or sale, shall be paid into Court, and not to the judgment-debtor:
Certificate to judgment-debtor.

Provided also that no mortgage, lease, or sale under this section, shall become absolute until it has been confirmed by the Court.

306. On every sale of immoveable property under this chapter, the person declared to be the purchaser shall pay, immediately after such declaration, a deposit of twenty-five per centum on the amount of his purchase-money to the officer conducting the sale, and, in default of such deposit, the property shall forthwith be put up again and sold.
Deposit by purchaser of immoveable property.

THE provisions of s. 293, Act X. of 1877 (Civil Procedure Code), for making a defaulting purchaser at a sale liable for any deficiency on a resale, extend to all sales, whether of moveable or immoveable property, and also to resales held under ss. 297, 306, and 308.—*Ramdhani Sahai v. Rajrani Koor*, I. L. R., 7 Cal. 337.

A CO-SHARER in undivided immoveable property, of which a share is sold in execution of a decree, does not, under Act X. of 1877, s. 310, acquire the right of pre-emption as against a stranger to whom such share has been knocked down, by merely asserting such right at the time of sale, and fulfilling the conditions of sale required by ss. 306 and 307 of that Act. He must bid at the sale, and as high as a stranger, before he can acquire a right of pre-emption under that section.—*Tej Singh v. Gobind Singh*, I. L. R., 2 All. 850.

307. The full amount of purchase-money shall be paid by the purchaser before the Court closes on the fifteenth day after the sale of the property, exclusive of such day, or, if the fifteenth day be a Sunday or other holiday, then on the first office-day after the fifteenth day.

A CO-SHARER in undivided immoveable property, of which a share is sold in execution of a decree, does not, under Act X. of 1877, s. 310, acquire the right of pre-emption as against a stranger to whom such share has been knocked down, by merely asserting such right at the time of sale, and fulfilling the conditions of sale required by ss. 306 and 307 of that Act. He must bid at the sale, and as high as the stranger, before he can acquire a right of pre-emption under that section.—*Tej Singh v. Gobind Singh*, I. L. R., 2 All. 850.

308. In default of payment within the period mentioned in the last preceding section, the deposit, after defraying the expenses of the sale, shall be forfeited to Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property, or to any part of the sum for which it may subsequently be sold.

THE provisions of s. 293, Act X. of 1877 (Civil Procedure Code), for making a defaulting purchaser at a sale liable for any deficiency on a resale, extend to all sales, whether of moveable or immoveable property, and also to resales held under ss. 297, 306, and 308.—*Ramdhani Sahai v. Rajrani Kooer*, I. L. R., 7 Cal. 337.

309. Every re-sale of immoveable property in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of a fresh notification in the manner and for the period hereinbefore prescribed for the sale.

THE provisions of s. 293, Act X. of 1877 (Civil Procedure Code), for making a defaulting purchaser at a sale liable for any deficiency on a resale, extend to all sales, whether of moveable or immoveable property, and also to resales held under ss. 297, 306, and 308.—*Ramdhani Sahai v. Rajrani Kooer*, I. L. R., 7 Cal. 327.

310. When the property sold in execution of a decree is a share of undivided immoveable property, and two or more persons, of whom one is a co-sharer, respectively advance the same sum at any bidding at such sale, such bidding shall be deemed to be the bidding of the co-sharer.

THE provisions of s. 310 of Act X. of 1877 are not applicable in a case where the property sold is not a share of undivided immoveable property, but the rights and interests of a mortgagee in such a share.—*Jairam Das and another (Defendants) v. Beni Prasad (Plaintiff)*, I. L. R., 3 All. 15.

THE requirements of s. 310 of Act X. of 1877 are not satisfied by the co-sharer preferring his claim to the right of pre-emption before the property is knocked down, and offering to pay a sum equal to that bid by the highest bidder. That section contemplates a distinct bid by the co-sharer in the ordinary manner of offering bids.—*Tej Singh v. Gobind Singh* (I. L. R., 2 All. 850) followed.—*Hira (Plaintiff) v. Unas Ali Khan (Defendant)*, I. L. R., 3 All. 827.

A CO-SHARER in undivided immoveable property, of which a share is sold in execution of a decree, does not, under Act X. of 1877, s. 310, acquire the right of pre-emption as against a stranger to whom such share has been knocked down, by merely asserting such right at the time of sale, and fulfilling the conditions of sale required by ss. 306 and 307 of that Act. He must bid at the sale, and as high as the stranger, before he can acquire a right of pre-emption under that section.—*Tej Singh v. Gobind Singh*, I. L. R., 2 All. 850.

311. The decree-holder, or any person whose immoveable property has been sold under this chapter, may apply to the Court to set aside the sale on the ground of a material irregularity in publishing or conducting it;

but no sale shall be set aside on the ground of irregularity unless the applicant proves to the satisfaction of the Court that he has sustained substantial injury by reason of such irregularity.

THE sale of immoveable property by an amin on a close holiday is not illegal, nor is it an irregularity in publishing or conducting the sale.—*Bisram Mahlon (Decree-holder) v. Sahibun-Nissa (Auction-purchaser)*, I. L. R., 3 All. 333.

THE provisions of s. 13 of Act XV. of 1877 are not applicable to proceedings in the execution of a decree.—*Ahsan Khan (Judgment-debtor) v. Ganga Ram (Decree-holder) and Muzzaffar Ali Khan (Auction-purchaser)*, I. L. R., 3 All. 185.

WHERE, after a judgment-debtor has applied, under Act X. of 1877, s. 311, to have a sale set aside, the auction-purchaser is made a party to the proceedings, and the sale is set aside, the auction-purchaser can appeal against the order setting aside the sale.—*Gopal Singh v. Dular Kuar*, I. L. R., 2 All. 352.

ALTHOUGH the auction-purchaser may not apply under Act X. of 1877, s. 311, to have a sale set aside, he may be a party to the proceedings after an application has been made under that section, and then, if an order is made against him, he can appeal from such order under s. 588.—*Kanthi Ram v. Bankey Lal*, I. L. R., 2 All. 396.

THE procedure to be followed upon the sale of an under-tenure is that prescribed by the Civil Procedure Code. S. 311 does not apply only to sales made under chap. xix. of the Code, and the sale of an under-tenure may be set aside upon any of the grounds mentioned in that section.—*Azizoonnessa Khatoon v. Gora Chand Dass*, I. L. R., 7 Cal. 163.

WHEN a judgment-debtor has died after decree, but before application has been made to execute the decree, the Court, before directing the attachment and sale of any property to proceed, must issue a notice to the party against whom the execution is applied for to show cause why the decree should not be executed against him, and its omission to do so will invalidate the entire subsequent proceedings.—In the matter of the petition of *Ramessuri Dass*. *Ramessuri Dass v. Doorgadass Chatterjee*, I. L. R., 6 Cal. 103.

UNDER ss. 289 and 274 of the Civil Procedure Code, it is necessary that a copy of the sale-proclamation should be affixed to some conspicuous place on the property attached; and the omission to do so is a material irregularity within the meaning of s. 311 of the Code of Civil Procedure. If it is proved that the price obtained for property sold at an execution-sale is greatly inadequate, and if it be also proved that there has been a material irregularity in publishing or conducting the sale, the Court will presume that the irregularity was the cause of the inadequacy of price, until proof is given to the contrary.—*Kalytara Chowdharin v. Ramcoomar Goopta*, I. L. R., 6 Cal. 466.

THE holder of a decree, in execution of which property is sold, is absolutely bound under Act X. of 1877, s. 294, to have express permission from the Court before he can purchase the property; and whether this objection is taken and pressed or otherwise, a sale to him is invalid, unless he has got explicit permission. The use, at a sale, of language by an intending bidder in disparagement of the property for the purpose of influencing bystanders, and deterring them from bidding for the property, is a "material irregularity," sufficient to render the sale invalid, under s. 311 of the same Act.—*Ruhinee Bullubh v. Brojonath Sircar*, I. L. R., 5 Cal. 308.

WHEN liberty is given to a decree-holder to bid at the sale of the judgment-debtor's property, he is bound to exercise the most scrupulous fairness in purchasing that property, and if he or his agent dissuades others from purchasing at the sale, that of itself is a sufficient ground why the purchase should be set aside. Where a decree-holder was joint in family with the manager of an infant defendant, and the defendant's property was to be sold in execution of the decree:

Held that the decree-holder ought not to be granted leave to purchase at the sale, because any purchase made by him would be for the benefit of the family of which the manager of the infant defendant was one of the members; and it would, in fact, be a purchase by an agent of the property of his principal.—*Woopendro Nath Sircar v. Brojendronath Mundul*, I. L. R., 7 Cal. 346.

AN application under s. 311 of Act X. of 1877 to set aside a sale in execution of a decree having been made by the judgment-debtor, the Court executing the decree (Subordinate Judge) disallowed the objections, and passed an order confirming such sale. The judgment-debtor subsequently applied to the Subordinate Judge for a review of judgment. The Subordinate Judge, without recording his reasons for granting such application, irregularly proceeded at once to pass an order setting aside such sale, without cancelling the previous order confirming it. The auction-purchaser appealed to the District Judge. That officer, treating the appeal as one from an order granting an application for review of judgment, entertained it, and set aside the Subordinate Judge's second order. *Held* that the District Judge was not justified in entertaining such appeal, such order not being one granting an application for review, but one setting aside a sale, and as such not appealable. Before a review of judgment is granted, an order granting the application for review, and the reasons for granting the same, should be recorded.—*Bhairon Din Singh (Judgment-debtor) v. Ram Sabai (Auction-purchaser)*, I. L. R., 3 All. 316.

ON AN application under s. 311 of the Civil Procedure Code (Act X. of 1877) to set aside a sale, it appeared that there had been a material irregularity in publishing the sale; but no witnesses were called to prove that substantial injury had been caused thereby. It also appeared that seventeen days after the applicant had applied for proclamations to be issued to his witnesses, he deposited the requisite fees; and that, subsequently, there was a delay of seven days in the office in issuing such proclamations, which were ultimately issued only three days prior to the day fixed for the hearing. On the applicant alleging that, in consequence of such delay, he had not been allowed a fair opportunity to produce his witnesses: *Held* that the Court cannot presume that substantial injury has been caused from the mere fact of there having been a material irregularity in publishing a sale; but when both a material irregularity and substantial injury have been proved, the Court may reasonably presume that the substantial injury is due to such irregularity. *Held* also that the applicant, having been guilty of laches himself, could not be allowed to set up the delay in the office as a ground for the non-production of his witnesses.—*Bonomali Mozumdar v. Woomesh Chunder Bundopadhya*, I. L. R., 7 Cal. 730.

THE mere fact that the amount of rent payable in respect of a tenure brought to sale in execution of a decree is not stated in the sale-proclamation, is not a material irregularity within the meaning of s. 311 of the Civil Procedure Code (Act X. of 1877), though if the amount of rent payable were stated to be more than it actually was, that might constitute such an irregularity as tending to lessen the price at which purchasers might be willing to buy. Where decrees for arrears of rent had been obtained by fractional shareholders in a tenure, and in execution thereof a moiety of the tenure had been sold, it appeared that the other moiety had been sold at the same time in execution of a mortgage-decree against some of the judgment-debtors in the rent-suits, on an objection being taken to the confirmation of such sale on the ground that the whole tenure should have been sold in execution of the rent-decrees. *Held* that all that the decree-holders were entitled to have sold was the right, title, and interest of their judgment-debtors, and that they were in the position of ordinary creditors having no lien on the tenure; and that, consequently, the mortgagor being entitled to enforce his lien against the moiety covered by his mortgage, the sale of the remaining moiety in satisfaction of the rent-decrees was a good sale, and could not be set aside.—*Mohendro Coomar Dutt v. Heera Mohun Coondoo, and Ishaneswary Dasee v. Gopal Das Dutt*, I. L. R., 7 Cal. 723.

CERTAIN immoveable property was attached in execution of a decree made by a Subordinate Judge, and also in execution of a decree made by a Munsif. These decrees were held by the same person, and the judgment-debtor was the same person. Such property was sold in execution of both decrees. On the application of the judgment-debtor, who brought into Court the amount due on the decree made by the Subordinate Judge, and with the consent of the decree-holder and the auction-purchaser, the Subordinate Judge made an illegal order setting aside such sale.

Subsequently, on the application of the decree-holder and the auction-purchaser, the Munsif made an order confirming such sale. *Per Spankie, J.*—That the Subordinate Judge had not any jurisdiction under s. 285 of the Civil Procedure Code to deal with such sale as regards the decree made by the Munsif, and the Munsif was not precluded by that section from confirming such sale as regards the decree made by him by reason that the Subordinate Judge, a Court of a higher grade, had made an order setting it aside.—*Per Oldfield, J.*—That having regard to the provisions of that section, it was doubtful whether the Munsif was competent to confirm such sale; but, inasmuch as the Subordinate Judge only intended to set it aside as regards the decree made by him, and his order was illegal, and the Munsif's order had done substantial justice, there was no reason to interfere.—*Chunni Lal and others (Judgment-debtors) v. Debi Prasad and another (Auction-purchasers), I. L. R., 3 All. 356.*

312. If no such application as is mentioned in the last preceding section be made, or if such application be made and the objection be disallowed, the Court shall pass an order confirming the sale as regards the parties to the suit and the purchaser.

If such application be made, and if the objection be allowed, the Court shall pass an order setting aside the sale.

No suit to set aside, on the ground of such irregularity, an order passed under this section, shall be brought by the party against whom such order has been made.

CERTAIN immoveable property was attached in execution of a decree made by a Subordinate Judge, and also in execution of a decree made by a Munsif. These decrees were held by the same person, and the judgment-debtor was the same person. Such property was sold in execution of both decrees. On the application of the judgment-debtor, who brought into Court the amount due on the decree made by the Subordinate Judge, and with the consent of the decree-holder and the auction-purchaser, the Subordinate Judge made an illegal order setting aside such sale. Subsequently, on the application of the decree-holder and the auction-purchaser, the Munsif made an order confirming such sale. *Per Spankie, J.*—That the Subordinate Judge had not any jurisdiction under s. 285 of the Civil Procedure Code to deal with such sale as regards the decree made by the Munsif, and the Munsif was not precluded by that section from confirming such sale as regards the decree made by him by reason that the Subordinate Judge, a Court of a higher grade, had made an order setting it aside. *Per Oldfield, J.*—That, having regard to the provisions of that section, it was doubtful whether the Munsif was competent to confirm such sale; but, inasmuch as the Subordinate Judge only intended to set it aside as regards the decree made by him, and his order was illegal, and the Munsif's order had done substantial justice, there was no reason to interfere.—*Chunni Lal and others (Judgment-debtors) v. Debi Prasad and another (Auction-purchasers), I. L. R., 3 All. 356.*

313. The purchaser at any such sale may apply to the Court to set aside the sale, on the ground that the person whose property purported to be sold had no saleable interest therein, and the Court may make such order as it thinks fit: provided that no order to set aside a sale shall be made, unless the judgment-debtor and the decree-holder have had opportunity of being heard against such order.

314. No sale of immoveable property in execution of a decree shall become absolute until it has been confirmed by the Court.

If sale set aside, price to be returned to purchaser. **315.** When a sale of immoveable property is set aside under section 312 or 313,

or when it is found that the judgment-debtor had no saleable interest in the property which purported to be sold, and the purchaser is, for that reason, deprived of it,

the purchaser shall be entitled to receive back his purchase-money (with or without interest as the Court may direct) from any person to whom the purchase-money has been paid.

The repayment of the said purchase-money and of the interest (if any) allowed by the Court may be enforced against such person under the rules provided by this Code for the execution of a decree for money.

WHERE immoveable property was sold in the execution of a decree under the provisions of Act VIII. of 1859, and the auction-purchaser, having been subsequently deprived of such property on the ground that the judgment-debtor had no saleable interest in it, applied under Act X. of 1877, s. 315, to the Court executing such decree for the return of the purchase-money: *Held* that the Court could entertain the application.—In the matter of the petition of Mulo, I. L. R., 2 All. 299. Dissented from in a subsequent case where it was held that Act X. of 1877, s. 315, cannot have retrospective effect so as to apply to a sale which had taken place before the Act came into operation.—*Hira Lal v. Karimunnissa*, I. L. R., 2 All. 780.

316. When a sale of immoveable property has become absolute in manner aforesaid, the Court shall grant a certificate to purchaser in certificate stating the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear the date of the confirmation of the sale; and, so far as regards the parties to the suit and persons claiming through or under them, the title to the property sold shall vest in the purchaser from the date of such certificate, and not before: provided that the decree under which the sale took place was still subsisting at that date.

UNDER Act VIII. of 1859, s. 259, and Act XX. of 1866, s. 17 and s. 42, it was necessary to register the certificate of sale itself, and not merely the memorandum of the certificate of sale.—*Srinivasa Sastri* (2nd Defendant), Appellant, v. *Seshayangar* (Plaintiff), Respondent, I. L. R., 3 Mad. 41.

THE applicant purchased certain land at a Court-sale on the 17th February 1876. The sale was confirmed on the 20th March of the same year. The purchaser did not apply for a certificate of sale until the 10th March 1880. *Held* that the application was barred by the Limitation (Act XV. of 1877), sched. i., art. 178. *Held* also that the purchaser's right to a certificate of sale accrued to him under ss. 256, 257, and 259 of the Civil Procedure Code (Act VIII. of 1859) on the 20th March 1876, when the sale was confirmed.—*In re Khaja Patthanji*, Applicant, I. L. R., 5 Bom. 202.

A PERSON purchased certain property at a sale in execution of a decree in November 1878; his purchase was confirmed, and he obtained a certificate of sale on the 23rd May 1879, from which date he remained in possession. The judgment-debtor applied to have the sale set aside for irregularity, but his application was dismissed both at the hearing and on the appeal. He had applied, before the sale took place, to stay the sale, on the ground that the right to apply for execution was barred. This application was dismissed, but was allowed on appeal. It did not appear that the auction-purchaser was a party to the proceeding, or that he was cognizant of the application. Two years from the date of the sale, and one and-a-half year from its confirmation, the judgment-debtor, on a summary application, obtained an order getting aside the sale and putting the auction-purchaser out of possession.

Held that the order was erroneous, the Subordinate Judge having no power, after the sale had been confirmed, to set aside the sale by a summary order; and that, under art. 165, sch. ii. of Act XV. of 1877, the application for such an order was barred. The words, "subsisting decree," in s. 316 of Act X. of 1877, as amended by Act XII. of 1879, mean a decree unreversed and in full force, and not merely one upon which execution cannot be issued.—In the matter of the petition of Mahomed Hossein v. Kokil Singh, I. L. R., 7 Cal. 91.

317. No suit shall be maintained against the certified purchaser on

Bar to suit against pur- the ground that the purchase was made on be-
chaser buying benámf. half of any other person, or on behalf of some
one through whom such other person claims.

Nothing in this section shall bar a suit to obtain a declaration that the name of the certified purchaser was inserted in the certificate fraudulently or without the consent of the real purchaser.

318. When the property sold is in the occupancy of the judgment-

Delivery of immoveable debtor or of some person on his behalf, or of
property in occupancy of some person claiming under a title created by
judgment-debtor. the judgment-debtor subsequently to the at-
achment of such property, and a certificate in respect thereof has
been granted under section 316, the Court shall, on application by the
purchaser, order delivery to be made by putting the purchaser or any
person whom he may appoint to receive delivery on his behalf in pos-
session of the property, and, if need be, by removing any person who
refuses to vacate the same.

A OBTAINED a money-decree against B on the 25th January 1872, in execution of which property belonging to B was sold on the 9th September 1874, A himself becoming the purchaser. The sale was confirmed on the 9th October 1874, but the certificate of sale was not issued till the 23rd January 1878. A applied for possession on the 2nd April 1879. *Held* that the right to apply for possession contemplated in Act VIII. of 1859, ss. 263 and 264 (corresponding with Act X. of 1877, ss. 318 and 319), accrued on the date the certificate of sale was issued, and not on that on which the sale was confirmed, and that, therefore, the period of limitation under Act XV. of 1877, sch. 2, art. 178, against the purchaser, counted from the former date.—*Basápa v. Marya*, I. L. R., 3 Bom. 433.

319. When the property sold is in the occupancy of a tenant or

Delivery of immoveable other person entitled to occupy the same, and
property in occupancy of a certificate in respect thereof has been granted
tenant. under section 316, the Court shall order deli-
very thereof to be made by affixing a copy of the certificate of sale in
some conspicuous place on the property, and proclaiming to the occu-
pant by beat of drum, or in such other mode as may be customary, at
some convenient place, that the interest of the judgment-debtor has
been transferred to the purchaser.

A OBTAINED a money-decree against B on the 25th January 1872, in execution of which property belonging to B was sold on the 9th September 1874, A himself becoming the purchaser. The sale was confirmed on the 9th October 1874, but the certificate of sale was not issued till the 23rd January 1878. A applied for possession on the 2nd April 1879. *Held* that the right to apply for possession contemplated in Act VIII. of 1859, ss. 263 and 264 (corresponding with Act X. of 1877, ss. 318 and 319), accrued on the date the certificate of sale was issued, and not on that on which the sale was confirmed, and that, therefore, the period of limitation under Act XV. of 1877, sch. 2, art. 178, against the purchaser, counted from the former date.—*Basápa v. Marya*, I. L. R., 3 Bom. 433.

320. The Local Government may, with the sanction of the Governor-General in Council, declare, by notification in the official Gazette, that in any local area the execution of decrees in cases in which a Court has ordered any immoveable property to be sold, or the execution of any particular kind of such decrees, or the execution of decrees ordering the sale of any particular kind of, or interest in, immoveable property, shall be transferred to the Collector, and rescind or modify any such declaration.

Power to prescribe rules for transferring to Collector or execution of certain decrees.

Power to prescribe rules for the transmission of the decree from the Court to the Collector, and for regulating the procedure of the Collector and his subordinates in executing the same, and for retransmitting the decree from the Collector to the Court.

Power to prescribe rules as to transmission, execution, and re-transmission of decrees.

HELD that effect cannot be given to the rules prescribed by the Local Government under s. 320 of Act X. of 1877, unless an order for sale has been made on or after the 1st October 1880.—*Hafizun-nissa (Judgment-debtor) v. Mahadeo Prasad and another (Decree-holders)*, I. L. R., 4 All. 116.

HELD that a decree for the sale of ancestral land, or of an interest in such land, in enforcement of an hypothecation on such land, is a "decree for money" within the meaning of the rules prescribed by the Local Government under s. 320 of Act X. of 1877.—*Birch (Judgment-debtor) v. Rati Ram (Decree-holder)*, I. L. R., 4 All. 115.

Power of Collector when execution of decree is so transferred.

321. When the execution of a decree has been so transferred, the Collector may—

- (a) proceed as the Court would proceed under section 305 ; or
- (b) raise the amount of the decree by letting in perpetuity, or for a term, on payment of a premium, or by mortgaging, the whole or any part of the property ordered to be sold ; or
- (c) sell the property ordered to be sold, or so much thereof as may be necessary.

322. When the execution of a decree, not being a decree ordering the sale of immoveable property in pursuance of a contract specifically affecting the same, but being a decree for money in satisfaction of which the Court has ordered the sale of immoveable property, has been so transferred, the Collector, if, after such enquiry as he thinks necessary, he has reason to believe that all the liabilities of the judgment-debtor can be discharged without a sale of the whole of his available immoveable property, may proceed as hereinafter provided.

Notice to be given to decree-holders and to persons having claims on property.

322A. In the case mentioned in section 322, the Collector shall publish a notice calling upon—

- (a) every person holding a decree for money against the judgment-debtor capable of execution by sale of his immoveable property, and which such decree-holder desires to have so executed, and every holder of a decree for money in execution of which proceedings for the sale of such property are pending, to produce before the Collector a copy of the decree, and a certificate from the Court which passed or is executing the same, declaring the amount recoverable thereunder :

(b) every person having any claim on the said property, to submit to the Collector a statement of such claim, and to produce the documents (if any) by which it is evidenced.

Such notice shall be in the language of the district, and shall allow a period of sixty days from the date of its publication for compliance therewith. It shall be published by being posted in the Court-house of the Court which made the original order under section 304, and at such other places (if any) as the Collector thinks fit. Where the address of any such decree-holder or claimant is known, a copy of the notice shall be sent to him by post or otherwise.

322B. Upon the expiration of the said period, the Collector shall appoint a day for hearing any representations which the judgment-debtor and the decree-holders or claimants (if any) may desire to make, and for holding such enquiry as he may deem necessary for informing himself as to the nature and extent of such decrees and claims and of the judgment-debtor's immoveable property, and may, from time to time, adjourn such hearing and enquiry.

If there be no dispute as to the fact or extent of the liability of the judgment-debtor to any of the decrees or claims of which the Collector is informed, or as to the relative priorities of such decrees or claims, or as to the liability of any such property for the satisfaction of such decrees or claims, the Collector shall draw up a statement, specifying the amount to be recovered for the discharge of such decrees, the order in which such decrees and claims are to be satisfied, and the immoveable property available for that purpose.

If any such dispute arises, the Collector shall refer the same, with a statement thereof and his own opinion thereon, to the Court which made the original order under section 304, and shall, pending the reference, stay proceedings relating to the subject thereof. The Court shall dispose of the dispute if the matter thereof be within its jurisdiction, or transmit the case to a competent Court for disposal, and the final decision shall be communicated to the Collector. The Collector shall then draw up a statement as above provided in accordance with such decision.

322C. The Collector may, instead of himself issuing the notices and holding the enquiry required by sections 322A and 322B, draw up a statement specifying the circumstances of the judgment-debtor and of his immoveable property so far as they are known to the Collector or appear in the records of his office, and forward such statement to the District Court; and such Court shall thereupon issue the notices, hold the inquiry, and draw up the statement required by sections 322A and 322B, and transmit such statement to the Collector.

322D. The decision by the Court of any dispute arising under section 322B or section 322C shall, as between the parties thereto, have the force of, and be appealable as, a decree.

Effect of decision of Court as to dispute arising under section 322B or 322C.

323. Whenever the amount to be recovered and the property available have been determined as provided in section 322B or 322C, the Collector may—

(1) if it appears that the amount cannot be recovered without the sale of the whole of the property available, proceed to sell such property; or if it appears that the amount with interest (if any) in accordance with the decree, and, when not decreed, with interest (if any) at such rate as he thinks reasonable, may be recovered without such sale,

(2) raise such amount and interest (notwithstanding any order under section 304),

(a) by letting in perpetuity or for a term, on payment of a premium, the whole or any part of the said property; or

(b) by mortgaging the whole or any part of such property; or

(c) by selling part of such property; or

(d) by letting on farm, or managing by himself or another, the whole or any part of such property for any term not exceeding twenty years from the date of the order of sale; or

(e) partly by one of such modes, and partly by another or others of such modes.

(3) For the purpose of managing, under this section, the whole or any part of such property, the Collector may exercise all the powers of its owner.

(4) For the purpose of improving the saleable value of the property available or any part thereof, or rendering it more suitable for letting or managing or for preserving the property from sale in satisfaction of an incumbrancer, the Collector may discharge the claim of any incumbrancer which has become payable, or compound the claim of any incumbrancer whether it has become payable or not, and, for the purpose of providing funds to effect such discharge or composition, may mortgage, let, or sell any portion of the property which he deems sufficient. If any dispute arises as to the amount due on any incumbrance with which the Collector proposes to deal under this paragraph, he may institute a suit in the proper Court, either in his own name or the name of the judgment-debtor, to have an account taken, or he may agree to refer such dispute to the decision of two arbitrators, one to be chosen by each party, or of an umpire to be named by such arbitrators.

In proceeding under paragraphs (2), (3), and (4) of this section, the Collector shall be subject to such rules, consistent with this Act, as may from time to time be made in this behalf by the Chief Controlling Revenue-authority.

ACT X. of 1877, s. 223, does not apply to a Small Cause Court, and s. 648 does not apply to a case in which the defendant resides within the same district in which the Court issuing a warrant is situate. Consequently a Small Cause Court may issue a warrant for the arrest of a person residing in another district, but not if he resides within the same district in which the Court is situate, but outside its local jurisdiction.—*Chunilál Sobhárám v. Purbhudás Kursandás*, I. L. R., 2 Bom. 560.

324. If, on the expiration of the letting or management under section 323, the amount to be recovered has not been realized, the Collector shall notify the fact in writing to the judgment-debtor or his representative in interest, stating at the same time that, if the balance

necessary to make up the said amount is not paid to the Collector within six weeks of the date of such notice, he will proceed to sell the whole or a sufficient part of the said property; and if, on the expiration of the said six weeks, the said balance is not so paid, the Collector shall sell such property or part accordingly.

324A. The Collector shall, from time to time, render to the Court Collector to render ac. which made the original order under section counts to Civil Court. 304 an account of all monies which come to his hands, and of all charges incurred by him in the exercise and performance of the powers and duties conferred and imposed on him under the provisions of this chapter, and shall hold the balance at the disposal of the Court.

Such charges shall include all debts and liabilities from time to time due to the Government in respect of the property or any part thereof, the rent (if any) from time to time due to a superior holder in respect of such property or part, and (if the Collector so directs) the expenses of witnesses summoned by him.

Application of balance. Such balance shall be applied by the Court as follows:—

firstly, in providing for the maintenance of such members of the judgment-debtor's family (if any) as are entitled to be maintained out of the income of the property, to such amount in the case of each member as the Court thinks fit; and

secondly, where the Collector has proceeded under section 321, in satisfaction of the original decree in execution of which the Court ordered the sale of immoveable property or otherwise as the Court may under section 295 direct; or

thirdly, where the Collector has proceeded under section 322, in keeping down the interest on incumbrances on the property, and (when the judgment-debtor has no other sufficient means of subsistence) in providing for his subsistence to such amount as the Court thinks fit; and in discharging rateably the claims of the original decree-holder and any other decree-holders who have complied with the said notice, and whose claims were included in the amount ordered to be recovered;

and no other holder of a decree for money shall be entitled to be paid out of such property or balance until the decree-holders who have obtained such order have been satisfied;

and the residue (if any) shall be paid to the judgment-debtor or such other person (if any) as the Court directs.

325. When the Collector sells any property under this chapter, he Sales how to be conducted. shall put it up to public auction, in one or more lots as he thinks fit, and may—

(a) fix a reasonable reserved price for each lot;

(b) adjourn the sale for a reasonable time, whenever he deems the adjournment necessary for the purpose of obtaining a fair price for the property, recording his reasons for such adjournment;

(c) buy in the property offered for sale, and resell the same by public auction or private contract, as he thinks fit.

325A. So long as the Collector can exercise or perform in respect

Restrictions as to alienation by judgment-debtor or his representative, and prosecution of remedies by decree-holders.

of the judgment-debtor's immoveable property, or any part thereof, any of the powers or duties conferred or imposed on him by sections 322 to 325 (both inclusive), the judgment-debtor or his representative in interest shall be incompetent to mortgage, charge, lease, or alienate such property or part except with the written permission of the Collector, nor shall any Civil Court issue any process against such property or part in execution of a decree for money.

During the same period no Civil Court shall issue any process of execution either against the judgment-debtor or his property in respect of any decree for the satisfaction whereof provision has been made by the Collector under section 323.

The same period shall be excluded in calculating the period of limitation applicable to the execution of any decree affected by the provisions of this section in respect of any remedy of which the decree-holder has thereby been temporarily deprived.

325B. When the property of which the sale has been ordered is

Provision where property situate in more districts than one, the powers is in several districts.

and duties conferred and imposed on the Collector by sections 321 to 325 (both inclusive) shall, from time to time, be exercised and performed by such one of the Collectors of the said districts as the Local Government may by general rule or special order direct.

325C. In exercising the powers conferred on him by sections 322

Powers of Collector to compel attendance of parties and witnesses and production of documents.

to 325 (both inclusive), the Collector shall have the powers of a Civil Court to compel the attendance of parties and witnesses and the production of documents.

326. When, in any local area in which no declaration under section

When Court may authorize Collector to stay public sale of land.

320 is in force, the property attached consists of land or of a share in land, and the Collector represents to the Court that the public sale of the land or share is objectionable, and that satisfaction of the decree may be made within a reasonable period by a temporary alienation or management of the land or share, the Court may authorize the Collector to provide for such satisfaction in the manner recommended by him, instead of proceeding to a sale of the land or share. In such case the provisions of sections 320, paragraph two, to 325C (both inclusive), shall apply, as far as they are applicable.

ACT X. of 1877, s. 326, does not apply to a decree which directs the sale of land or of a share in land in pursuance of a contract specifically affecting the same. The Court, therefore, cannot authorize the Collector to stay the sale in such a case under s. 326.—*Bhagwan Prasad v. Sheo Sahai*, I. L. R., 2 All. 856.

327. The Local Government may, from time to time, with the

Local rules as to sales of land in execution of decrees for money.

sanction of the Governor-General in Council, make special rules for any local area, imposing conditions in respect of sale of any class of

interests in land in execution of decrees for money, where such interests are so uncertain or undetermined as in the opinion of the Local Government to make it impossible to fix their value;

and if, when this Code comes into operation in any local area, any special rules as to sale of land in execution of decrees are in force therein, the Local Government may continue such rules in force, or may, from time to time, with the sanction of the Governor-General in Council, modify the same.

All rules so made or continued, and all such modifications of the same, shall be published in the local official Gazette, and shall thereupon have the force of law.

H.—Of Resistance to Execution.

328. If, in the execution of a decree for the possession of property, the officer charged with the execution of the warrant is resisted or obstructed by any person, the decree-holder may complain to the Court at any time within one month from the time of such resistance or obstruction.

The Court shall fix a day for investigating the complaint, and shall summon the party against whom the complaint is made to answer the same.

THE above section applies to M. S. C. C. (so far as relates to moveable property), and to P. S. C. C.

329 If the Court is satisfied that the obstruction or resistance was occasioned by the judgment-debtor, or by some person at his instigation, the Court shall inquire into the matter of the complaint, and pass such order as it thinks fit.

THE above section applies to M. S. C. C. (so far as relates to moveable property), and to P. S. C. C.

THE power given by s. 329 of the Civil Procedure Code to make such order as the Court shall see fit must be construed with regard to the circumstances in respect of which the power is to be exercised. An order under s. 329 should be the result of the fact that the defendant in the suit, who is precluded by the decree from disputing plaintiff's right, unjustly instigates a third party, who has no real interest in the property, to prevent the plaintiff from getting the benefit of his execution. A Court has no power under this section to determine, as between a judgment-creditor and a third party obstructing the execution of the decree, important questions on the merits, which are wholly unconnected with, and cannot be affected by, the fact that the obstruction is made at the instigation of the defendant.—*Govinda Nair (Petitioner) v. Késava (Counter-Petitioner)*, I. L. R., 3 Mad. 81.

330. If the Court is satisfied that the resistance or obstruction was without any just cause, and that the complainant is still resisted or obstructed in obtaining possession of the property by the judgment-debtor or some other person at his instigation, the Court may, at the instance of the decree-holder, and without prejudice to any penalty to which such judgment-debtor or other person may be liable, under the Indian Penal Code or any other law, for such resistance or obstruction, commit the judgment-debtor or such other person to jail for a term which may extend to thirty days, and direct that the decree-holder be put into possession of the property.

THE above section applies to M. S. C. C. (so far as relates to moveable property), and to P. S. C. C.

331. If the resistance or obstruction has been occasioned by any

Procedure in case of obstruction by claimant in good faith, other than judgment-debtor.

person other than the judgment-debtor claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment-debtor, the claim shall be numbered and registered as a suit between the decree-holder as plaintiff and the claimant as defendant ;

and the Court shall, without prejudice to any proceedings to which the claimant may be liable under the Indian Penal Code or any other law for the punishment of such resistance or obstruction, proceed to investigate the claim in the same manner and with the like power as if a suit for the property had been instituted by the decree-holder against the claimant under the provisions of Chapter V.,

and shall pass such order as it thinks fit for executing or staying execution of the decree.

Every such order shall have the same force as a decree, and shall be subject to the same conditions as to appeal or otherwise.

The above section applies to M. S. C. C. (so far as relates to moveable property), and to P. S. C. C.

AN INVESTIGATION under s. 331 of the Civil Procedure Code (prior to the Amendment Act of 1879) is limited to the fact of possession, and is no bar to a subsequent suit brought to try the title to the land in dispute.—Chinnasami Pillai (Plaintiff), Appellant, v. Krishna Pillai (Defendant), Respondent, I. L. R., 3 Mad. 104.

THE power given by s. 329 of the Civil Procedure Code to make such order as the Court shall see fit must be construed with regard to the circumstances in respect of which the power is to be exercised. An order under s. 329 should be the result of the fact that the defendant in the suit, who is precluded by the decree from disputing plaintiff's right, unjustly instigates a third party, who has no real interest in the property, to prevent the plaintiff from getting the benefit of his execution. A Court has no power under this section to determine, as between a judgment-creditor and a third party obstructing the execution of the decree, important questions on the merits which are wholly unconnected with, and cannot be affected by, the fact that the obstruction is made at the instigation of the defendant.—Govinda Nair (Petitioner) v. Késava (Counter-Petitioner), I. L. R., 3 Mad. 81.

332. If any person other than the judgment-debtor is dispossessed

Procedure in case of person dispossessed of property disputing right of decree-holder to be put into possession.

of any property in execution of a decree, and such person disputes the right of the decree-holder to dispossess him of such property under the decree, on the ground that the property was *bonâ fide* in his possession on his own account or on account of some person other than the judgment-debtor, and that it was not comprised in the decree, or that, if it was comprised in the decree, he was not a party to the suit in which the decree was passed, he may apply to the Court.

If, after examining the applicant, it appears to the Court that there is probable cause for making the application, the Court shall proceed to investigate the matter in dispute ; and if it finds that the ground mentioned in the first paragraph of this section exists, it shall make an order that the applicant recover possession of the property, and if it does not find as aforesaid, it shall dismiss the application.

In hearing applications under this section, the Court shall confine itself to the grounds of dispute above specified.

The party against whom an order is passed under this section may institute a suit to establish the right which he claims to the present possession of the property ; but, subject to the result of such suit (if any), the order shall be final.

THE above section applies to M. S. C. C. (so far as relates to moveable property), and to P. S. C. C.

A PERSON claiming under Act X. of 1877, s. 332, need not prove his title, but only the fact of possession.—*Shafi-ud-din v. Lochan Singh*, I. L. R., 2 All. 94.

A MORTGAGEE who is in possession of the mortgaged property under the mortgage is in possession "on his own account" within the meaning of Act VIII. of 1859, s. 230, and Act X. of 1877, s. 332.—*Shafi-ud-din v. Lochan Singh*, I. L. R., 2 All. 94.

AN INVESTIGATION under s. 331 of the Civil Procedure Code (prior to the Amendment Act of 1879) is limited to the fact of possession, and is no bar to a subsequent suit brought to try the title to the land in dispute.—*Chinnasámi Pillai* (Plaintiff), Appellant, *v. Krishna Pillai* (Defendant), Respondent, I. L. R., 3 Mad. 104.

WHERE, in pursuance of an order made in the execution of a decree while Act VIII. of 1859 was in force, certain persons were dispossessed of certain property after that Act was repealed and X. of 1877 came into force, and such persons applied under Act X. of 1877, s. 332, to be restored to the possession of such property on certain of the grounds specified in that section : *Held* that such persons were entitled to the benefit of that section.—*Shafi-ud-din v. Lochan Singh*, I. L. R., 2 All. 94.

333. Nothing in section 331 or 332 applies to a person to whom

Transfer of property by judgment-debtor after institution of suit.

the judgment-debtor has transferred the property after the institution of the suit in which the decree is made.

THE above section applies to M. S. C. C. (so far as relates to moveable property), and to P. S. C. C.

334. If the purchaser of any immoveable property sold in execu-

Resisting or obstructing purchaser in obtaining possession of immoveable property.

tion of a decree be resisted or obstructed by the judgment-debtor or any one on his behalf in obtaining possession of the property, the provisions of this chapter relating to resistance or

obstruction to a decree-holder in obtaining possession of the property adjudged to him shall be applicable.

A PURCHASER of immoveable property at a Court sale, having been obstructed by the defendant, made an application to the Court, under s. 268 of Act VIII. of 1859, for the removal of the obstruction, but subsequently withdrew his application. The Court thereupon made an endorsement upon the application to the effect that, as the applicant did not wish to proceed further, no investigation was made. *Held* that no such order had been made as was contemplated by s. 269 of Act VIII. of 1859, that section contemplating, at least, an order against one party or the other ; and that, therefore, the provisions contained in the same section as to the time within which a suit must be brought, did not apply to the case of the plaintiff.—*Bhikhá* (Original Plaintiff), Appellant, *v. Sákárlál* (Original Defendant), Respondent, I. L. R., 5 Bom. 440.

335. If the purchaser of any such property is resisted or obstructed

Obstruction by claimant other than judgment-debtor.

by any person other than the judgment-debtor claiming in good faith a right to the present possession thereof, or if, in delivering possession thereof, any such person is dispossessed, the Court, on the complaint of the purchaser or the person so dispossessed, shall inquire into the matter of the resistance, obstruction, or dispossession, as the case may be, and pass such order thereon as it thinks fit.

The party against whom such order is passed may institute a suit to establish the right which he claims to the present possession of the property ; but, subject to the result of such suit (if any), the order shall be final.

I.—Of Arrest and Imprisonment.

336. A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall, as soon as practicable, be brought before the Court, and his imprisonment may be in the civil jail of the district in which the Court ordering the imprisonment is situate, or, when such jail does not afford suitable accommodation, in any other place which the Local Government may appoint for the confinement of persons ordered by the Courts of such district to be imprisoned :

Provided as follows :—

(a) for the purpose of making an arrest under this section, no dwelling-house shall be entered after sunset or before sunrise, and no outer door of a dwelling-house shall be broken open. But, when the officer authorized to make the arrest has duly gained access to any dwelling-house, he may unfasten and open the door of any room in which he has reason to believe the judgment-debtor is to be found : provided that, if the room be in the actual occupancy of a woman who is not the judgment-debtor, and who, according to the customs of the country, does not appear in public, the officer shall give notice to her that she is at liberty to withdraw ; and, after allowing a reasonable time for her to withdraw, and giving her every reasonable facility for withdrawing, he may enter such room for the purpose of making the arrest :

(b) when the decree in execution of which a judgment-debtor is arrested is a decree for money, and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him.

The Local Government may, by notification published in the official Gazette, direct that, whenever a judgment-debtor is arrested in execution of a decree for money and brought before the Court under this section, the Court shall inform him that he may apply under Chapter XX. to be declared an insolvent, and that he will be discharged if he has not committed any act of bad faith regarding the subject of his application, and if he places all his property in possession of a receiver appointed by the Court.

If, after such publication, the judgment-debtor express his intention so to apply, and if he furnish sufficient security that he will appear when called upon, and that he will, within one month, apply under section 344 to be declared an insolvent, the Court shall release him from arrest :

But if he fails so to apply, the Court may either direct the security to be realized, or commit him to jail in execution of the decree.

In the case of a surety such security may be realized in manner provided by section 253.

The above section applies to M. S. C. C. ; also to P. S. C. C., except the last three clauses.

ACT X. of 1877, s. 336, cl. 5, applies to Small Cause Court debtors, and such persons can obtain the benefit of chap. xx. of that Act by applying to a Court which has jurisdiction under that chapter.—*Syed Moidin v. Sundaramurthia*, I. L. R., 2 Mad. 9.

It is not necessary that a special order of Court should be made, empowering an officer authorized to arrest a purda-nashin lady to enter the zanána of the house in which she resides. Under s. 336 of the Civil Procedure Code, if the officer is able to enter the house, he may break into any room in the house, including the zanána, in order to effect the arrest.—*S. M. Kadumbinee Dossee v. S. M. Koylashkaminee Dossee*, I. L. R., 7 Cal. 19..

337. Every warrant for the arrest of the judgment-debtor shall

Warrant for arrest to direct the officer entrusted with its execution
 rect judgment-debtor to bring him before the Court with all conven-
 brought up. nient speed, unless the amount which he has
 been ordered to pay, together with the interest thereon and the costs
 (if any) to which he is liable, be sooner paid.

THE above section applies to M. S. C. C. and P. S. C. C.

338. The Local Government may from time to time prescribe scales,

Scales of subsistence- graduated according to rank, race, and national-
 allowances. ity, of monthly allowances payable for the sub-
 sistence of judgment-debtors.

THE above section applies to M. S. C. C. and P. S. C. C.

339. No judgment-debtor shall be arrested in execution of a decree

Judgment-debtor's sub- unless and until the decree-holder pays into
 sistence-money. Court such sum as, having regard to the scales
 so fixed, the Judge thinks sufficient for the subsistence of the judg-
 ment-debtor from his arrest until he can be brought before the Court.

When a judgment-debtor is committed to jail in execution of a decree, the Court shall fix for his subsistence such monthly allowance as he may be entitled to according to the said scales, or, where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs.

The monthly allowance fixed by the Court shall be supplied by the party on whose application the decree has been executed; by monthly payments in advance before the first day of each month.

The first payment shall be made to the proper officer of the Court for such portion of the current month as remains unexpired before the judgment-debtor is committed to jail, and the subsequent payments (if any) shall be made to the officer in charge of the jail.

THE above section applies to M. S. C. C. and P. S. C. C.

340. Sums disbursed by the decree-holder for the subsistence of the

Subsistence-money to be judgment-debtor in jail shall be deemed to be
 costs in suit. costs in the suit :

Provided that the judgment-debtor shall not be detained in jail or arrested on account of any sum so disbursed.

THE above section applies to M. S. C. C. and P. S. C. C.

Release of judgment-debt-
 or.

**341. The judgment-debtor shall be dis-
 charged from jail,**

(a) on the amount mentioned in the warrant of committal being paid to the officer in charge of the jail; or

(b) on the decree being otherwise fully satisfied; or

(c) at the request of the person on whose application he has been imprisoned; or

(d) on such person omitting to pay the allowance as hereinbefore directed; or

(e) if the judgment-debtor be declared an insolvent, as hereinafter provided; or

(f) when the term of his imprisonment, as limited by section 342, is fulfilled:

Provided that, in the second, third, and fifth cases mentioned in this section, the judgment-debtor shall not be discharged without the order of the Court.

A judgment-debtor discharged under this section is not thereby discharged from his debt; but he cannot be re-arrested under the decree in execution of which he was imprisoned.

THE above section applies to M. S. C. C. and P. S. C. C.

THE decree in an administration-suit directed A, a party to the suit, to pay over a sum of money, which she admitted was in her hands, to her own attorney in the suit, to be applied by him as directed by the decree. A refused to pay over the money, and she was imprisoned for disobedience to the Court's order. After she had been in prison for six months, she applied to the Judge of the Court below, under Act X. of 1877, s. 341, to be discharged. This order was refused. *Held*, on appeal, that the proceeding under which A had been imprisoned was not in execution of a decree, but that she was imprisoned under process of contempt, and that the provisions of ss. 341 and 342 did not apply to the case.—*Martin v. Lawrence*, I. L. R., 4 Cal. 655.

Imprisonment not to exceed six months.

342. No person shall be imprisoned in execution of a decree for a longer period than six months;

or for a longer period than six weeks if the decree be for the payment of a sum of money not exceeding fifty

When not to exceed six weeks.

rupees.

THE above section applies to M. S. C. C. and P. S. C. C.

THE decree in an administration-suit directed A, a party to the suit, to pay over a sum of money, which she admitted was in her hands, to her own attorney in the suit, to be applied by him as directed by the decree. A refused to pay over the money, and she was imprisoned for disobedience to the Court's order. After she had been in prison for six months, she applied to the Judge of the Court below, under Act X. of 1877, s. 341, to be discharged. This order was refused. *Held*, on appeal, that the proceeding under which A had been imprisoned was not in execution of a decree, but that she was imprisoned under process of contempt, and that the provisions of ss. 341 and 342 did not apply to the case.—*Martin v. Lawrence*, I. L. R., 4 Cal. 655.

343. The officer entrusted with the execution of the warrant shall endorse thereupon the day on, and the manner in, which it was executed, and, if the latest day specified in the warrant for the return thereof has been exceeded, the reason of the delay, or if it was not executed, the reason why it was not executed, and shall return the warrant with such endorsement to the Court.

Endorsement of warrant.

If the endorsement is to the effect that such officer is unable to execute the warrant, the Court shall examine him on oath touching his alleged inability, and may, if it thinks fit, summon and examine witnesses as to such inability, and shall record the result.

THE above section applies to M. S. C. C. and P. S. C. C.

CHAPTER XX.

OF INSOLVENT JUDGMENT-DEBTORS.

344. Any judgment-debtor arrested or imprisoned in execution of a decree for money, or against whose property an order of attachment has been made in execution of such a decree, may apply in writing to be declared an insolvent.

Any holder of a decree for money may apply in writing that the judgment-debtor may be declared an insolvent.

Every such application shall be made to the District Court within the local limits of whose jurisdiction the judgment-debtor resides or is in custody.

A PERSON applying under Act X. of 1877, s. 344, must satisfy the Court that his case comes within the provisions of s. 351, and the burden of proof lies upon him. An order dismissing such an application is appealable under s. 588.—*Mumtaz Hossein v. Brij Mohun Thakoor*, I. L. R., 4 Cal. 888. Followed in I. L. R., 6 Cal. 168.

THERE is no appeal from an order made under Act X. of 1877, s. 351, refusing to grant an application to be made an insolvent. The appeal allowed under s. 588, cl. 17, so far as an order under s. 351 is concerned, is on behalf of the judgment-creditor only.—*Juggutjeebun Gooptoo v. Haro Coomar Pal*, I. L. R., 5 Cal. 719. Dissented from in I. L. R., 6 Cal. 168.

THE Deputy Commissioner of Akyab, sitting as District Judge, has power to entertain applications under Act X. of 1877, chap. xx. S. 6 (d) of that Act interposes no obstacle in the way of his dealing with such applications, nor does the exercise of such power in any way "affect the jurisdiction of the Recorder of Rangoon" sitting as an Insolvent Court in Akyab within the meaning of that section.—*In re Abdool Hamed*, I. L. R., 4 Cal. 94.

THE effect of Act X. of 1877, s. 5, coupled with sch. 2, is to render the whole of chap. xx. (relating to insolvent debtors) inapplicable to a Mufassal Small Cause Court, notwithstanding the words "any Court other than a District Court" and any Court situate within his district, which occur in that section. Consequently the Government Resolution of 3rd April 1878, investing the Judge of the Small Cause Court at Ahmedabad with powers, under the said chapter, to adjudicate in insolvency matters, is *ultra vires* and invalid.—*Lallu Ganesh v. Ranchhod Kahandas*, I. L. R., 2 Bom. 641.

345. The application, when made by the judgment-debtor, shall set forth—

(a) the fact of his arrest or imprisonment, or that an order for the attachment of his property has been made, the Court by whose order he was arrested or imprisoned, or by which the order of attachment was made, and, where he has been arrested or imprisoned, the place in which he is in custody;

(b) the amount, kind, and particulars of his property, and the value of any such property not consisting of money;

(c) the place or places in which such property is to be found;

(d) his willingness to put it at the disposal of the Court ;
 (e) the amount and particulars of all pecuniary claims against him ; and

(f) the names and residences of his creditors, so far as they are known to or can be ascertained by him.

The application, when made by the holder of a decree for money, shall set forth the date of the decree, the Court by which it was passed, the amount remaining due thereunder, and the place where the judgment-debtor resides or is in custody.

346. The application shall be signed and verified by the applicant

Subscription and verification of application. in manner hereinbefore prescribed for signing and verifying plaints.

347. The Court shall fix a day for hearing the application, and

Service of copy of application and notice. shall cause a copy thereof, with a notice in writing of the time and place at which it will be

heard, to be stuck up in Court and served at the applicant's expense—

where the applicant is the judgment-debtor—on the holder of the decree in execution of which he was arrested or imprisoned or the order of attachment was made, or on the pleader of such decree-holder, and on the other creditors (if any) mentioned in the application :

where the applicant is the decree-holder—on the judgment-debtor or his pleader.

The Court may, if it thinks fit, publish, at the applicant's expense, the application in such official Gazettes and public newspapers as it thinks fit.

Where the applicant is the judgment-debtor, the Court may exempt him from any payments under this section if satisfied that he is unable to make them.

348. The Court may also, if it thinks fit, cause a like copy and

Power to serve other creditors. notice to be served on any other person alleging himself to be a creditor of the applicant, and applying for leave to be heard on the application.

349. Where the judgment-debtor is under arrest[†], the Court may,

Powers of Court as to judgment-debtor under arrest. pending the hearing under section 350, order him to be immediately committed to jail, or leave him in the custody of the officer to whom the

service of the warrant was entrusted, or release him on his furnishing sufficient security that he will appear when called upon.

350. On the day so fixed, or on any subsequent day to which the

Procedure at hearing. Court may adjourn the hearing, the Court shall examine the judgment-debtor, in the presence of the persons on whom such notice has been served or their pleaders, as to his then circumstances and as to his future means of payment, and shall hear the said decree-holder, the other creditors mentioned in the application, and the other persons (if any) alleging themselves to be creditors, in opposition to the judgment-debtor's discharge ; and may, if it thinks fit, grant time to the said decree-holder and other creditors or persons to adduce evidence showing that the judgment-debtor is not entitled to be declared an insolvent

Declaration of insolvency and appointment of receiver.

351. If the Court is satisfied—

(a) that the statements in the application are substantially true ;
 (b) that the judgment-debtor has not, with intent to defraud his creditors, concealed, transferred, or removed any part of his property since the institution of the suit in which was passed the decree in execution of which he was arrested or imprisoned, or the order of attachment was made, or at any subsequent time ;

(c) that he has not, knowing himself to be unable to pay his debts in full, recklessly contracted debts or given an unfair preference to any of his creditors by any payment or disposition of his property ;

(d) that he has not committed any other act of bad faith regarding the matter of the application,

the Court may declare him to be an insolvent, and may also, if it thinks fit, make an order appointing a receiver of his property, or if it does not appoint such receiver, may discharge the insolvent.

If the Court is not so satisfied, it shall make an order rejecting the application.

AN ORDER refusing to grant an application to be made an insolvent is appealable under cl. 17, s. 588 of the Code of Civil Procedure. Such an order must be considered to be one made under s. 351.—*Nubbi Buksh v. Chasni*, I. L. R., 6 Cal. 168.

A PERSON applying under Act X. of 1877, s. 344, must satisfy the Court that his case comes within the provisions of s. 351, and the burden of proof lies upon him. An order dismissing such an application is appealable under s. 588.—*Mumtaz Hossein v. Brij Mohun Thakoor*, I. L. R., 4 Cal. 888. Followed in I. L. R., 6 Cal. 168.

AN APPEAL lies against an order passed under section 351 of Act X. of 1877, although it was an order refusing to declare petitioner an insolvent. The words used in cl. d of s. 351, "the matter of the application," embrace the insolvency, and all the facts and circumstances material to explain the insolvency. Acts of bad faith towards creditors just at the period at which the applicant was contemplating insolvency may be held to be part of the matter of the application. A Judge would not be exercising a right discretion under section 351 if he refused relief in the case of persons who, although knowing that they had not the means of paying at the time the debt was contracted, yet honestly believed upon reasonable grounds that they would have the means of paying eventually.—*Bāvachi Packi v. Pisree, Leslie, & Co.*, I. L. R., 2 Mad. 219.

352. The creditors mentioned in the application, and the other

Creditors to prove their debts.

persons (if any) alleging themselves to be creditors of the insolvent, shall then produce evidence of the amount and particulars of their respective pecuniary claims against him ; and the Court shall, by order, determine the persons who have proved themselves to be the insolvent's creditors and their respective

Schedule to be framed.

debts, and shall frame a schedule of such persons and debts ; and the declaration under section 351 shall be deemed to be a decree in favour of each of the said creditors for their said respective debts.

A copy of every such schedule shall be stuck up in the Court-house.

Nothing in this section shall be deemed to entitle a partner in an insolvent-firm, or, when he has died before the insolvency, his legal representative, to prove in competition with the creditors of the firm.

353. Any creditor of the insolvent who is not mentioned in such Applications by unscheduled creditors. schedule may apply to the Court for permission to produce evidence of the amount and particulars of his pecuniary claims against the insolvent, and, in case the applicant proves himself to be a creditor of the insolvent, for an order directing his name to be inserted in the schedule as a creditor for the debt so proved.

Any creditor mentioned in the schedule may apply to the Court for an order altering the schedule so far as regards the amount, nature, or particulars of his own debt, or to strike out the name of another creditor, or to alter the schedule so far as regards the amount, nature, or particulars of the debt of another creditor.

In the case of any application under this section, the Court, after causing such notices as it thinks fit to be served, at the applicant's expense, on the insolvent and the other creditors, and hearing their objections (if any), may comply with or reject the application.

354. Every order under section 351 shall be published in the local Effect of order appointing Receiver. official Gazette, and shall operate to vest in the Receiver all the insolvent's property (except the particulars specified in the first proviso to section 266), whether set forth in his application or not.

355. The Receiver so appointed shall give such security Receiver to give security and collect assets. may direct, and shall possess himself of all such property, except as aforesaid ; and on his certifying that the insolvent has placed him in possession thereof, or has done everything in his power for that purpose, the Court may discharge the insolvent upon such conditions (if any) as the Court thinks fit.

Duty of Receiver.

356. The Receiver shall proceed under the direction of the Court—

- (a) to convert the property into money :
- (b) to pay thereout debts, fines, and penalties (if any) due by the insolvent to Government :
- (c) to pay the said decree-holder's costs :
- (d) to discharge, according to their respective priorities, all debts secured by mortgage of the insolvent's property :
- (e) to distribute the balance among the scheduled creditors rateably according to the amounts of their respective debts and without any preference :

and such Receiver may retain, as a remuneration for the performance of his duties, a commission, to be fixed by the Court, not exceeding the rate of five per centum upon the amount of the balance so distributed (the amount of the commission so retained being deemed a distribution), and shall deliver the surplus (if any) to the insolvent or his legal representative :

His right to remuneration. Provided that, in any local area in which a declaration has been made under section 320 and is in force, no sale of immoveable property paying revenue to Government or held or let for agricultural purposes

shall be made by the Receiver; but, after he has sold the other property of the insolvent, the Court shall ascertain (a) the amount required to satisfy the claims of the scheduled creditors after deducting the monies already received, (b) the immoveable property of the insolvent remaining unsold, and (c) the incumbrances (if any) existing thereon, and shall forward a statement to the Collector containing the particulars aforesaid; and thereupon the Collector shall proceed to raise the amount so required by the exercise of such of the powers conferred on him by sections 322 to 325 (both inclusive) as he thinks fit, and subject to the provisions of those sections, so far as they may be applicable; and shall hold at the disposal of the Court all sums that may come to his hands by such exercise.

357. An insolvent discharged under section 351 or 355 shall not

Effect of discharge.

be arrested or imprisoned on account of any of the scheduled debts. But (subject to the provisions of section 358) his property, whether previously or subsequently acquired (except the particulars specified in the first proviso to section 266, and except the property vested in the Receiver), shall, by order of the Court, be liable to attachment and sale until the debts due to the scheduled creditors are satisfied to the extent of one-third, or until the expiry of twelve years from the date of the order of discharge under section 351 or 355.

358. If the aggregate amount of the scheduled debts is two hundred

Declaration that insolvent is discharged from liability.

rupees or a less sum, the Court may, and in any case after the scheduled debts have been satisfied to the extent of one-third, or after the expiry of twelve years from the order of discharge, the Court shall, declare the insolvent discharged as aforesaid absolved from further liability in respect of such debts.

Procedure in case of dishonest applicant.

359. Whenever, at the hearing under section 350, it is proved that the applicant has

(a) been guilty, in his application, of any concealment or of wilfully making any false statement as to the debts due by him, or respecting the property belonging to him, whether in possession or in expectancy, or held for him in trust;

(b) fraudulently concealed, transferred, or removed any property; or

(c) committed any other act of bad faith regarding the matter of the application,

the Court shall, at the instance of any of his creditors, sentence him by order in writing to imprisonment for a term which may extend to one year from the date of committal.

Or the Court may, if it think fit, send him to the Magistrate to be dealt with according to law.

360. The Local Government may, by notification in the official

Investment of other Courts with powers of District Courts.

Transfer of cases.

Gazette, invest any Court other than a District Court with the powers conferred on District Courts by sections 344 to 359 (both inclusive), and the District Judge may transfer to any Court situate in his district, and so invested, any case instituted under section 344,

Any Court so invested may entertain any application under section 344 by any person arrested in execution of a decree of such Court.

Nothing in this chapter shall apply to any Court having jurisdiction in the towns of Rangoon, Maulmain, Akyab, and Bassein, where the property of the judgment-debtor exceeds in value two thousand five hundred rupees, or the amount of the pecuniary claims against him exceeds five thousand rupees, or such property, or any part thereof, is situate outside British Burma.

THE above section applies to M. S. C. C.

PART II. OF INCIDENTAL PROCEEDINGS.

CHAPTER XXI.

OF THE DEATH, MARRIAGE, AND INSOLVENCY OF PARTIES.

No abatement by party's death, if right to sue survives.

361. The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

Illustrations.

(a.) A covenants with B and C to pay an annuity to B during C's life. B and C sue A to compel payment. B dies before the decree: the right to sue survives to C, and the suit does not abate.

(b.) In the same case, all the parties die before decree. The right to sue survives to the representative of the survivor of B and C, and he may continue the suit against A's representative.

(c.) A sues B for libel. A dies. The right to sue does not survive, and the suit abates.

(d.) A, a member of a Hindú joint family under the Mitákshará law, institutes a suit for partition of the family property. A dies leaving B, a minor son, his heir. The right to sue survives to B, and the suit does not abate.

THE above section applies to M. S. C. C. and P. S. C. C.

362. If there be more plaintiffs or defendants than one, and any of them dies, and if the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

Procedure in case of death of one of several plaintiffs or defendants, if right to sue survive.

THE above section applies to M. S. C. C. and P. S. C. C.

363. If there be more plaintiffs than one, and any of them dies, and if the right to sue does not survive to the surviving plaintiff or plaintiffs alone, but survives to him or them and the legal representative of the deceased plaintiff jointly, the Court may, on the application of such legal representative of deceased.

Procedure in case of death of one of several plaintiffs where right to sue survives to survivors and representative of deceased.

sentative, enter his name on the record in the place of such deceased plaintiff, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs and such legal representative.

- THE above section applies to M. S. C. C. and P. S. C. C.

If a plaintiff dies after decree, his representatives are not bound to apply within 60 days to be made parties to the suit, but have the same time to file an appeal as the plaintiff would have had. The Civil Procedure Code, ss. 363—365, and the Limitation Act, sch. ii., art. 171, do not apply to the case of a plaintiff dying after decree.—*Rāmanāda Sāstri*, a minor under the guardianship of the executors *Muttusāmi Ayyar* and another (Plaintiffs), Appellants, v. *Minatchi Ammal* and another (Defendants), Respondents, I. L. R., 3 Mad. 236.

SCH. 2, art. 171 of the above Act, which gives a period of sixty days to a person claiming to be the legal representative of a deceased plaintiff under Act X. of 1877, s. 363 or s. 365, does not apply to the representative of a deceased judgment-debtor claiming admission to continue execution-proceedings commenced by him. Act X. of 1877 does not provide that applications for execution shall, like suits, abate by the death of the judgment-creditor. Such a representative may, therefore, come in at any time, as his coming in is contemplated in sch. 2, art. 179, expl. 1 of Act XV. of 1877, subject always to the same conditions as would apply to his principal.—*Gulābdās v. Lakshman Narhar*, I. L. R., 3 Bom. 221.

364. If, within the time limited by law, no application be made to the Court by any person claiming to be the legal representative of a deceased plaintiff, the suit shall proceed at the instance of the surviving plaintiff or plaintiffs;

and the legal representative (if any) of the deceased plaintiff shall be made a party, and shall be interested in and bound by the decree passed in the suit, in the same manner as if the suit had proceeded at his instance conjointly with the surviving plaintiff or plaintiffs.

THE above section applies to M. S. C. C. and P. S. C. C.

365. In case of the death of a sole plaintiff or sole surviving plaintiff, the Court may, where the right to sue survives, on the application of the legal representative of the deceased, enter his name in the place of such plaintiff on the record, and the suit shall thereupon proceed.

THE above section applies to M. S. C. C. and P. S. C. C.

If a plaintiff dies after decree, his representatives are not bound to apply within 60 days to be made parties to the suit, but have the same time to file an appeal as the plaintiff would have had. The Civil Procedure Code, ss. 363—365, and the Limitation Act, sch. ii., art. 171, do not apply to the case of a plaintiff dying after decree.—*Rāmanāda Sāstri*, a minor under the guardianship of the executors *Muttusāmi Ayyar* and another (Plaintiffs), Appellants, v. *Minatchi Ammal* and another (Defendants), Respondents, I. L. R., 3 Mad. 236.

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366. If, within the time limited by law, no such application be made to the Court by any person claiming to be the legal representative of the deceased plaintiff, the Court may pass an order that the suit shall abate, and shall, on the application of the defendant, award to the defendant the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff;

or the Court may, if it think proper, on the application of the defendant, and upon such terms as to costs or otherwise as it thinks fit, pass such other order as it thinks fit for bringing in the legal representative of the deceased plaintiff, or for proceeding with the suit in order to a final determination of the matter in dispute, or for both those purposes.

Explanation.—A certificate of heirship, or a certificate to collect debts, does not of itself constitute the person holding it the legal representative of the deceased. But when the person holding any such certificate obtains thereby property belonging to the deceased, he may be treated as a legal representative liable in respect of such property.

THE above section applies to M. S. C. C. and P. S. C. C.

AN APPELLATE Court rejected the application of the legal representative of a deceased sole plaintiff-appellant to enter his name in the place of such appellant on the record, on the ground that such application had not been made within the time limited by law, and passed an order that the suit should abate. *Held* that the order of the Appellate Court, passed under the first paragraph of s. 366 of Act X. of 1877, not being appealable under cl. 18, s. 588, of that Act, nor being a decree within the terms of s. 2, from which a second appeal would lie, was not appealable.—*Ahmad Ata (Plaintiff) v. Mata Badal Lal (Defendant)*, I. L. R., 3 All. 844.

367. If any dispute arise as to who is the legal representative of a deceased plaintiff, the Court may either stay the suit until the fact has been determined in another suit, or decide at or before the hearing of the suit who shall be admitted to be such legal representative for the purpose of prosecuting the suit.

THE above section applies to M. S. C. C. and P. S. C. C.

368. If there be more defendants than one, and any of them die before decree, and the right to sue does not survive against the surviving defendant or defendants alone,

Procedure in case of death of one of several defendants,

or of sole or sole surviving defendant.

and also in case of the death of a sole defendant, or sole surviving defendant where the right to sue survives,

the plaintiff may make an application to the Court, specifying the name, description, and place of abode of any person whom he alleges to be the legal representative of the deceased defendant, and whom he desires to be made the defendant in his stead.

The Court shall thereupon enter the name of such representative on the record in the place of such defendant,

and shall issue a summons to such representative to appear on a day to be therein mentioned to defend the suit;

and the case shall thereupon proceed in the same manner as if such representative had originally been made a defendant, and had been a party to the former proceedings in the suit :

Provided that the person so made defendant may object that he is not the legal representative of the deceased defendant, or may make any defence appropriate to his character as such representative.

When the plaintiff fails to make such application within the period prescribed therefor, the suit shall abate, unless he satisfies the Court that he had sufficient cause for not making the application within such period.

THE above section applies to M. S. C. C. and P. S. C. C.

PROCEDURE analogous to that laid down in Act X. of 1877, s. 368, in respect to the death of a defendant, must be applied in the case of the death of a respondent. Where, therefore, a respondent dies during the pendency of an appeal, it is for the appellant to take the initiative, and he is at liberty to select one or more persons to defend the appeal ; and no person, other than the person so selected, has a right to force himself into the proceedings, and to claim to have his name entered as representative of the deceased respondent against the appellant's consent. Persons so introduced on the record may or may not be the real representatives of the deceased respondent, but the merits of their claim to be such, on the ground of any right or status, such as that of adoption, is immaterial to the determination of the appeal.—*Lakshminbai v. Bálkrishna*, I. L. R., 4 Bom. 654.

369. The marriage of a female plaintiff or defendant shall not

Suit not abated by marriage of female party. cause the suit to abate, but the suit may, notwithstanding, be proceeded with to judgment, and, where the decree is against a female defendant, it may thereupon be executed against her alone.

If the case is one in which the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also ; and, in case of judgment for the wife, execution of the decree may, with such permission, be issued upon the application of the husband, where the husband is by law entitled to the subject-matter of the decree.

THE above section applies to M. S. C. C. and P. S. C. C.

370. The bankruptcy or insolvency of a plaintiff in any suit which

When plaintiff's bankruptcy or insolvency bars suit. his assignee or the receiver appointed under section 351 might maintain for the benefit of his creditors shall not bar the suit, unless such assignee or receiver declines to continue the suit and to give security for the costs thereof within such time as the Court may order.

If the assignee or receiver neglect or refuse to continue the suit and to give such security within the time so ordered, the defendant may apply for the dismissal of the suit on the ground of the plaintiff's bankruptcy or insolvency, and the Court may dismiss the suit and award to the defendant the costs which he has incurred in defending the same, to be proved as a debt against the plaintiff's estate.

THE above section applies to M. S. C. C. and P. S. C. C.

371. When a suit abates or is dismissed under this chapter, no

Effect of abatement or dismissal. fresh suit shall be brought on the same cause of action.

But the person claiming to be the legal representative of the deceased or bankrupt or insolvent plaintiff may apply for an order to set aside the order for abatement or dismissal; and, if it be proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

THE above section applies to M. S. C. C. and P. S. C. C.

WHERE a suit was declared abated in 1868 under s. 102 of Act VIII. of 1859 for non-prosecution by the representative of deceased plaintiff: *Held* that the Civil Procedure Code, s. 371, was no bar to a fresh suit instituted in 1880 on the same cause of action.—Balikunath Ramen Menon (3rd Defendant), Appellant, v. Mulla-lankaji Sri Kumaran Nambudri (Plaintiff), Respondent, I. L. R., 3 Mad. 31.

UPON the death of a sole plaintiff, if no application to revive is made within sixty days from the date of the plaintiff's death, the suit abates. But the Court may, under Act X. of 1877, s. 371, revive the suit, on the application of the legal representative of the plaintiff within three years from the time when the right to apply accrues, if he can shew that he was prevented by sufficient cause from continuing the suit.—Bhojrub Dass Johurry v. Doman Thakoor, I. L. R., 5 Cal. 139.

372. In other cases of assignment, creation, or devolution of any interest pending the suit, the suit may, with the leave of the Court, given either with the consent of all parties or after service of notice in writing upon them, and hearing their objections (if any), be continued by or against the person to whom such interest has come, either in addition to, or in substitution for, the person from whom it has passed, as the case may require.

THE above section applies to M. S. C. C. and P. S. C. C.

THE words, "pending the suit," in Act X. of 1877, s. 372, relate to a suit in which no final order has been made.—Gocool Chunder Gossamee v. The Administrator-General of Bengal, I. L. R., 5 Cal. 726.

AFTER a decree had been made in a suit, the case was, in 1875, struck out of the board for want of prosecution. No steps were taken to have it restored. In 1879 both the plaintiff and defendant died. In the same year the heirs of the plaintiff instituted a suit against the administrator of the defendant for the purpose of having the decree in the original suit carried out. This suit was dismissed by the Court of first instance under Act X. of 1877, s. 13; but the Appellate Court, holding that the original suit was subsisting, and might be reconstituted, directed that the plaintiffs should be allowed to amend their plaint by putting it into the form of a petition under s. 372 of the same Act. On a petition by the plaintiffs praying that the original suit might be revived and restored to the board: *Held* that the application was not barred under sch. 2, art. 178. Even if art. 178 was applicable, the application would not be barred, limitation running from the time when the suit was allowed to be reconstituted.—Govind Chunder Goswami v. Rungun Money, I. L. R., 6 Cal. 60.

A SUIT was instituted by the trustee appointed under a will, against the executrix, for the purpose of having the trusts of the will carried into execution. A decree was made and certain directions were given for the purpose of having a scheme settled, by which the trusts were to be carried out; but before the scheme was finally settled and approved, and while the proceedings were pending, the case was struck out of the board for want of prosecution. Subsequently both the plaintiff and defendant died. The heirs of the plaintiff then instituted a suit against the Administrator-General as representing the estate of the defendant for carrying the trusts into execution, and prayed that their suit might be considered as supplemental to the original one. *Held* that the original suit, though no longer upon the board,

was capable of revival, and that, if no person were living whose consent might be obtained, or to whom notice might be given, the Court might give leave without any such consent or notice, and that the proper course to pursue was to allow the plaintiffs to amend their plaint by putting it in the form of a petition under Act X. of 1877, s. 372, the defendant being at liberty to put in any answer which he might have done, if the proceeding had been by petition in the first instance.—*Gocool Chunder Gossamee v. The Administrator-General of Bengal*, I. L. R., 5 Cal. 726.

CHAPTER XXII.

OF THE WITHDRAWAL AND ADJUSTMENT OF SUITS.

373. If, at any time after the institution of the suit, the Court is

Power to allow plaintiff to withdraw with liberty to bring fresh suit. satisfied, on the application of the plaintiff, (a) that the suit must fail by reason of some formal defect, or (b) that there are sufficient grounds for permitting him to withdraw from the suit or to abandon part of his claim with liberty to bring a fresh suit for the subject-matter of the suit or in respect of the part so abandoned, the Court may grant such permission on such terms as to costs or otherwise as it thinks fit.

If the plaintiff withdraw from the suit, or abandon part of his claim, without such permission, he shall be liable for such costs as the Court may award, and shall be precluded from bringing a fresh suit for the same matter or in respect of the same part.

Nothing in this section shall be deemed to authorize the Court to permit one of several plaintiffs to withdraw without the consent of the others.

THE above section applies to M. S. C. C. and P. S. C. C.

374. In any fresh suit instituted on permission granted under the

Limitation-law not affected by first suit. last preceding section, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been brought.

THE above section applies to M. S. C. C. and P. S. C. C.

375. If a suit be adjusted wholly or in part by any lawful agree-

Compromise of suits. ment or compromise, or if the defendant satisfy the plaintiff in respect to the whole or any part of the matter of the suit, such agreement, compromise, or satisfaction shall be recorded, and the Court shall pass a decree in accordance therewith so far as it relates to the suit, and such decree shall be final, so far as relates to so much of the subject-matter of the suit as is dealt with by the agreement, compromise, or satisfaction.

THE above section applies to M. S. C. C. and P. S. C. C.

CHAPTER XXIII.

OF PAYMENT INTO COURT.

376. The defendant in any suit to recover a debt or damages may,

Deposit by defendant of amount in satisfaction of claim. at any stage of the suit, deposit in Court such sum of money as he considers a satisfaction in full of the claim.

THE above section applies to M. S. C. C. and P. S. C. C.

377. Notice in writing of the deposit shall be given through the Court by the defendant to the plaintiff, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the plaintiff on his application.

THE above section applies to M. S. C. C. and P. S. C. C.

378. No interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of the receipt of such notice, whether the sum deposited be in full of the claim or fall short thereof.

Interest on deposit not allowed to plaintiff after notice.

THE above section applies to M. S. C. C. and P. S. C. C.

379. If the plaintiff accept such amount only as satisfaction in part of his claim, he may prosecute his suit for the balance; and if the Court decides that the deposit by the defendant was a full satisfaction of the plaintiff's claim, the plaintiff must pay the costs of the suit incurred after the deposit and the costs incurred previous thereto, so far as they were caused by excess in the plaintiff's claim.

Procedure where plaintiff accepts deposit as satisfaction in part.

If the plaintiff accept such amount as satisfaction in full of his claim, he shall present to the Court a statement to that effect, and such statement shall be filed, and the Court shall pass judgment accordingly, and, in directing by whom the costs of each party are to be paid, the Court shall consider which of the parties is most to blame for the litigation.

Procedure where he accepts it as satisfaction in full.

Illustrations.

(a.) A owes B Rs. 100. B sues A for the amount, having made no demand for payment and having no reason to believe that the delay caused by making a demand would place him at a disadvantage. On the plaint being filed, A pays the money into Court. B accepts it in full satisfaction of his claim, but the Court should not allow him any costs, the litigation being presumably groundless on his part.

(b.) B sues A under the circumstances mentioned in illustration (a). On the plaint being filed, A disputes the claim. Afterwards A pays the money into Court. B accepts it in full satisfaction of his claim. The Court should also give B his costs of suit, A's conduct having shown that the litigation was necessary.

(c.) A owes B Rs. 100, and is willing to pay him that sum without suit. B claims Rs. 150, and sues A for that amount. On the plaint being filed, A pays Rs. 100 into Court, and disputes only his liability to pay the remaining Rs. 50. B accepts the Rs. 100 in full satisfaction of his claim. The Court should order him to pay A's costs.

THE above section applies to M. S. C. C. and P. S. C. C.

CHAPTER XXIV.

OF REQUIRING SECURITY FOR COSTS.

380. If, at the institution or at any subsequent stage of a suit, it

When security for costs may be required from plaintiff at any stage of suit.

appears to the Court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are, residing out of British India, and that such plaintiff does not, or that no one of such plaintiffs

does, possess any sufficient immoveable property within British India independent of the property in suit, the Court may, either of its own motion or on the application of any defendant, order the plaintiff or plaintiffs, within a time to be fixed by the order, to give security for the payment of all costs incurred and likely to be incurred by any defendant.

THE above section applies to M. S. C. C. and P. S. C. C.

THE meaning to be given to the word "residence" in legislative enactments depends upon the intention of the Legislature in framing the particular provision in which the word is used. The residence intended in Act X. of 1877, s. 380, is residence under such circumstances as will afford a reasonable probability that the plaintiff will be forthcoming when the suit is decided.—*Mahomed Shuffli v. Laldin Abdula*, I. L. R., 3 Bom. 227.

381. In the event of such security not being furnished within the time so fixed, the Court shall dismiss the suit, unless the plaintiff or plaintiffs be permitted to withdraw therefrom under the provisions of section 373.

THE above section applies to M. S. C. C. and P. S. C. C.

382. Whoever leaves British India under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs shall be deemed to be residing out of British India within the meaning of section 380.

THE above section applies to M. S. C. C. and P. S. C. C.

CHAPTER XXV.

OF COMMISSIONS.

A.—Commissions to examine Witnesses.

383. Any Court may, in any suit, issue a commission for the examination, on interrogatories or otherwise, of persons resident within the local limits of its jurisdiction, who are exempted under this Code from attending the Court, or who are, from sickness or infirmity, unable to attend it.

THE above section applies to M. S. C. C. and P. S. C. C.

384. Such order may be made by the Court either of its own motion, or on the application, supported by affidavit or otherwise, of any party to the suit or of the witness to be examined.

THE above section applies to M. S. C. C. and P. S. C. C.

385. The commission for the examination of a person who resides within the local limits of the jurisdiction of the Court issuing the same may be issued to any person whom the Court thinks fit to execute the same.

THE above section applies to M. S. C. C. and P. S. C. C.

Persons for whose examination commission may issue.

386. Any Court may, in any suit, issue a commission for the examination of—

- (a) any person resident beyond the local limits of its jurisdiction ;
- (b) persons who are about to leave such limits before the date on which they are required to be examined in Court ; and
- (c) civil and military officers of Government who cannot, in the opinion of the Judge, attend the Court without detriment to the public service.

Such commission may be issued to any Court, not being a High Court or the Court of the Recorder of Rangoon, within the local limits of whose jurisdiction such person resides, or to any pleader of a High Court whom the Court issuing the commission thinks fit to appoint.

The Court, on issuing any commission under this section, shall direct whether the commission shall be returned to itself or to any subordinate Court.

THE above section applies to M. S. C. C. and P. S. C. C.

SUBSEQUENTLY to the institution of the plaintiffs' suit, one of the defendants died, and his son, as his legal representative, was made a defendant in his stead. The new defendant (*inter alia*) objected that his father had been dead more than six months before the application of the plaintiffs to make him a defendant, and that, therefore, the suit should abate, as provided by the last clause of s. 368 of the Civil Procedure Code, Act X. of 1877 (introduced by the amending Act, XII. of 1879), and art. 171B of the Limitation Act, XV. of 1877, which prescribes a period of sixty days within which an application should be made to have the representative of a deceased defendant made a defendant to a suit. When the amending Act, XII. of 1879, was passed—that is, on the 29th of July, 1879,—the original defendant had been dead more than six months ; but the plaintiff made an application to have the representative of the deceased defendant made a defendant before the publication of the Act in the local Gazette. *Held* that the provisions of art. 171B of the Limitation Act should not be given retrospective effect, and that the plaintiffs' application was not time-barred. The general rule as laid down in *Reg. v. Doráji* (11 Bom. H. C. Rep. 117)—that “an Act of limitation, being a law of procedure, governs all proceedings, to which its terms are applicable, from the moment of its enactment, except so far as its operation is expressly excluded or postponed”—admits of the qualification that, when the retrospective application of a statute of limitation would destroy vested rights, or inflict such hardship or injustice as could not have been within the contemplation of the Legislature, then the statute is not, any more than any other law, to be construed retrospectively.—*Khusálbhái and others (Plaintiffs), Applicants, v. Kábhái and others (Defendants), Opponents*, I. L. R., 6 Bom. 26.

387. When any Court to which application is made for the issue of a commission for the examination of a person residing at any place not within British India is satisfied that his evidence is necessary, the Court may issue such commission.

Commission to examine witness not within British India.

THE above section applies to M. S. C. C. and P. S. C. C.

Court to examine witness pursuant to commission.

388. Every Court receiving a commission for the examination of any person shall examine him pursuant thereto.

THE above section applies to M. S. C. C. and P. S. C. C.

389. After the commission has been duly executed, it shall be returned, together with the evidence taken under it, to the Court out of which it issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order; and the commission and the return thereto, and the evidence taken under it, shall (subject to the provisions of the next following section) form part of the record of the suit.

THE above section applies to M. S. C. C. and P. S. C. C.

390. Evidence taken under a commission shall not be read as evidence in the suit without the consent of the party against whom the same is offered, unless

When depositions may be read in evidence.

(a) the person who gave the evidence is beyond the jurisdiction of the Court, or dead, or unable, from sickness or infirmity, to attend to be personally examined, or exempted from personal appearance in Court, or

(b) the Court, in its discretion, dispenses with the proof of any of the circumstances mentioned in the last preceding clause, and authorizes the evidence of any person being read as evidence in the suit, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

THE above section applies to M. S. C. C. and P. S. C. C.

Provisions as to execution and return of commissions to apply to commissions issued by foreign Courts.

391. The provisions hereinbefore contained as to the execution and return of commissions shall apply to commissions issued by

- (a) Courts situate beyond the limits of British India and established by the authority of Her Majesty or of the Governor-General in Council, or
- (b) Courts situate in any part of the British Empire other than British India, or
- (c) Courts of any foreign country for the time being in alliance with Her Majesty.

THE above section applies to M. S. C. C. and P. S. C. C.

B.—Commissions for local Investigations.

392. In any suit or proceeding in which the Court deems a local Commission to make local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne-profits or damages or annual nett profits, and the same cannot be conveniently conducted by the Judge in person, the Court may issue a commission to such person as it thinks fit, directing him to make such investigation and to report thereon to the Court:

Provided that, when the Local Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.

THE above section applies to M. S. C. C. and P. S. C. C. •

393. The Commissioner, after such local inspection as he deems necessary, and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing, signed with his name, to the Court.

The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit, and shall form part of the record; but the Court, or, with the permission of the Court, any of the parties to the suit, may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to the manner in which he has made the investigation.

Report and depositions to be evidence in suit.

THE above section applies to M. S. C. C. and P. S. C. C.

C.—Commissions to examine Accounts.

394. In any suit in which an examination or adjustment of accounts is necessary, the Court may issue a commission to such person as it thinks fit, directing him to make such examination or adjustment.

Commission to examine or adjust accounts.

THE above section applies to M. S. C. C. and P. S. C. C.

THE Code of Civil Procedure does not authorize the dismissal of a suit on refusal or failure of a party to deposit the amount ordered by the Court as remuneration to a Commissioner appointed under s. 394 to examine accounts. The remuneration of a Commissioner appointed by the Court to examine accounts should, as a rule, be a definite amount, and not at a monthly allowance.—*Rágava Chariár (Plaintiff), Appellant, v. Védánta Chariár and others (Defendants), Respondents, I. L. R., 3 Mad. 259.*

IN A suit for an account against an agent, the plaintiff stated that the defendant had not submitted proper accounts of his agency, and prayed that the defendant might be ordered to produce certain papers, and that, on failure to submit the accounts, he might be decreed to pay the plaintiff Rs. 1,200 by way of damages. The plaintiff also alleged that, in consequence of the defendant's negligence and mismanagement, the plaintiff believed that he had sustained a loss of Rs. 5,000, and prayed for a decree for this sum. *Held* that no decree could be made for the sums mentioned, or any other sum, until an account had been taken, and the amount due from the defendant ascertained. *Per Field, J.*—It is the duty of an agent to render proper accounts to his employer irrespective of any contract to that effect. And he does not discharge that duty by merely delivering to his employer a set of written accounts without attending to explain them, and produce the vouchers by which the items of disbursements are supported. Method to be followed on taking accounts in the mufassal stated. If the taking of accounts by the Judge would occasion a waste of public time, he should resort to the provisions of ss. 394 and 395 of the Civil Procedure Code, and furnish the Commissioner with such part of the proceedings and such detailed instructions as may appear necessary. In order to enable an agent to prepare accounts to be furnished to his principal, he should be allowed to have reasonable access, at proper times and in the presence of responsible persons, to such books and papers in the principal's possession as may be necessary for the preparation of the accounts.—*Annodea Persad Roy v. Dwarkanath Gangopadhyaya, I. L. R., 6 Cal. 754.*

Court to give Commissioner necessary instructions.

395. The Court shall furnish the Commissioner with such part of the proceedings and such detailed instructions as appear necessary,

and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his examination.

The proceedings of the Commissioner shall be received in evidence in the suit, unless the Court has reason to be dissatisfied with them, in which case the Court shall direct such further inquiry as is requisite.

Court to receive Commissioner's proceedings or direct further inquiry.

THE above section applies to M. S. C. C. and P. S. C. C.

IN A suit for an account by a principal against his agent, the plaintiff should ask in his plaint that a proper account may be taken. If the defendant is found liable to render such account for a certain period, the Court should make an interlocutory decree declaring that he is so liable, and direct him to file an account in Court within a fixed period. This decree may be enforced under s. 260 of the Civil Procedure Code. After an account has been filed, the plaintiff should be allowed reasonable time to examine it. If the objections are numerous, the procedure prescribed by ss. 394 and 395 and form 157 of sched. iv. to the Code should be followed. When the accounts have been taken, the Court must determine the amount due, and the final decree should be for the payment of this amount, and also, if necessary, for the delivery of any papers, vouchers, or other documents which have come into the hands of the agent in the course of his employment. In a suit for an account against A and B as agents, the plaintiff asked for an account as against A from 1265 (1858) to 1283 (1876), and as against B from 1281 (1874) to 1283 (1876). *Held* that there had been no misjoinder. The seven days within which a notice of objections to a decree by a respondent under s. 561 of the Code must be given, is not a period to which the provisions of paragraph 2 of s. 5 of the Limitation Act can be extended, and the Court has no discretion to extend the period. Forms of keeping accounts of joint property in the mufassal considered.—*Degamber Mouzumdar v. Kallynath Roy*, I. L. R., 7 Cal. 654.

IN A suit for an account against an agent, the plaint stated that the defendant had not submitted proper accounts of his agency, and prayed that the defendant might be ordered to produce certain papers, and that, on failure to submit the accounts, he might be decreed to pay the plaintiff Rs. 1,200 by way of damages. The plaint also alleged that, in consequence of the defendant's negligence and mismanagement, the plaintiff believed that he had sustained a loss of Rs. 5,000, and prayed for a decree for this sum. *Held* that no decree could be made for the sums mentioned, or any other sum, until an account had been taken, and the amount due from the defendant ascertained. *Per* Field, J.—It is the duty of an agent to render proper accounts to his employer irrespective of any contract to that effect. And he does not discharge that duty by merely delivering to his employer a set of written accounts without attending to explain them, and produce the vouchers by which the items of disbursements are supported. Method to be followed on taking accounts in the mufassal stated. If the taking of accounts by the Judge would occasion a waste of public time, he should resort to the provisions of ss. 394 and 395 of the Civil Procedure Code, and furnish the Commissioner with such part of the proceedings and such detailed instructions as may appear necessary. In order to enable an agent to prepare accounts to be furnished to his principal, he should be allowed to have reasonable access, at proper times and in the presence of responsible persons, to such books and papers in the principal's possession as may be necessary for the preparation of the accounts.—*Annoda Persad Roy v. Dwarkanath Gangopadhyay*, I. L. R., 6 Cal. 754.

D.—Commission to make Partition.

396. In any suit in which the partition of immoveable property not paying revenue to Government appears to the Court to be necessary, the Court, after ascertaining the several parties interested in such property and their several rights therein,

Commission to make partition of non-revenue paying immoveable property.

may issue a commission to such persons as it thinks fit to make a partition according to such rights.

The Commissioners shall ascertain and inspect the property, and Procedure of Commis- shall divide the same into as many shares as sioners. may be directed by the order under which the commission issues, and shall allot such shares to the parties, and may, if authorized thereto by the said order, award sums to be paid for the purpose of equalizing the value of the shares.

The Commissioners shall then prepare and sign a report, or (if they cannot agree) separate reports, appointing the share of each party, and distinguishing each share (if so directed by the said order) by metes and bounds. Such report or reports shall be annexed to the commission and transmitted to the Court; and the Court, after hearing any objections which the parties may make to the report or reports, shall either quash the same and issue a new commission, or (where the Commissioners agree in their report) pass a decree in accordance therewith.

THE above section applies to M. S. C. C.

IN A suit for partition, the Subordinate Judge appointed an amin under s. 396 of the Civil Procedure Code to effect a partition. The amin made his report, which was objected to on the merits by the defendant, but ultimately the report was confirmed, the defendant having acquiesced in the proceedings. On appeal to the District Judge, the defendant took an objection, that the appointment of the amin was irregular. *Held* that, having acquiesced in the proceedings so far, it was too late for the defendant to take the objection. *Per* Pontifex, J. (Field, J., doubting).—In a suit for partition, it is competent to the Court, in its preliminary decree, to appoint any one person whom it thinks fit to be a Commissioner to make the partition under s. 396 of the Civil Procedure Code. The section uses the word 'Commissioners,' but it is not necessary for the purposes of partition that there should be more than one Commissioner, and by force of the General Clauses Act, the word 'Commissioners' may be read in the singular number. The intention of s. 396 is, that, upon the first hearing of a suit, the Court shall determine whether the plaintiff is entitled to a partition, and shall ascertain who the several persons entitled in the property are, and shall direct by a preliminary decree or order that Commissioners be appointed to make the partition.—*Gayan Chunder Sen v. Durga Churn Sen*, I. L. R., 7 Cal. 318.

IN A suit for an account by a principal against his agent, the plaintiff should ask in his plaint that a proper account may be taken. If the defendant is found liable to render such account for a certain period, the Court should make an interlocutory decree declaring that he is so liable, and direct him to file an account in court within a fixed period. This decree may be enforced under s. 260 of the Civil Procedure Code. After an account has been filed, the plaintiff should be allowed reasonable time to examine it. If the objections are numerous, the procedure prescribed by ss. 394 and 395 and form 157 of sched. iv. to the Code should be followed. When the accounts have been taken, the Court must determine the amount due, and the final decree should be for the payment of this amount, and also, if necessary, for the delivery of any papers, vouchers, or other documents which have come into the hands of the agent in the course of his employment. In a suit for an account against A and B as agents, the plaintiff asked for an account as against A from 1265 (1858) to 1283 (1876), and as against B from 1281 (1874) to 1283 (1876). *Held* that there had been no misjoinder. The seven days within which a notice of objections to a decree by a respondent under s. 561 of the Code must be given, is not a period to which the provisions of paragraph 2 of s. 5 of the Limitation Act can be extended, and the Court has no discretion to extend the period. Forms of keeping accounts of joint property in the mufassal considered.—*Degamber Mouzumdar v. Kallynath Roy*, I. L. R., 7 Cal. 654.

E.—General Provisions.

397. Before issuing any commission under this chapter, the Court may order such sum (if any) as it thinks reasonable for the expenses of the commission, to be, within a time to be fixed by the Court, paid into Court by the party at whose instance or for whose benefit the commission is issued.

THE above section applies to M. S. C. C. and P. S. C. C.

398. Any Commissioner appointed under this chapter may, unless otherwise directed by the order of appointment, Powers of Commissioners.

(a) examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him ;

(b) call for and examine documents and other things relevant to the subject of inquiry ;

(c) at any reasonable time enter upon or into any land or building mentioned in the order.

THE above section applies to M. S. C. C. and P. S. C. C.

399. The provisions of this Code relating to the summoning, attendance, and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to persons required to give evidence or to produce documents under this chapter, whether the commission in execution of which they are so required has been issued by a Court situate within, or by a Court situate beyond, the limits of British India.

For the purposes of this section, the Commissioner shall be deemed to be a Court of Civil Judicature.

THE above section applies to M. S. C. C. and P. S. C. C.

400. Whenever a commission is issued under this chapter, the Court shall direct that the parties to the suit shall appear before the Commissioner in person, or by their agents or pleaders.

Court to direct parties to appear before Commissioner.

Procedure ex parte.

If the parties do not so appear, the Commissioner may proceed *ex parte*.

THE above section applies to M. S. C. C. and P. S. C. C.

PART III.

OF SUITS IN PARTICULAR CASES.

CHAPTER XXVI.

SUITS BY PAUPERS.

Suits may be brought in form *pauperis*.

401. Subject to the following rules, any suit may be brought by a pauper.

Explanation.—A person is a “pauper” when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit, or, where no such fee is prescribed, when he is not entitled to property worth one hundred rupees other than his necessary wearing apparel and the subject-matter of the suit.

THE above section applies to M. S. C. C.

A NEXT friend, who is a pauper, can bring a suit on behalf of a pauper minor.—*Golaupmonee Dossee v. Prosonomoyee Dossee*, 11 B. L. R. 373.

WHERE a suit was brought on behalf of a pauper minor by a next friend who was also a pauper, it was held that the failure of such suit was no ground for saddling the costs on the next friend.—*Brijessuree Dossia v. Kishore Doss*, 25 W. R. 316.

WHERE the representative of a pauper applies to bring a suit *in formâ pauperis*, there is no necessity for the Court to inquire whether such representative is also a pauper, but the Court, if satisfied that he is the legal representative, should allow him to carry on the suit.—*Bhagbut Doss v. Buloram Dass*, 3 W. R. 20.

THE rule of English practice which prevents a minor from instituting a suit *in formâ pauperis* through his next friend, unless he gives proof not only that he is himself a pauper, but that the next friend is a pauper, and that he cannot get any substantial person to act as his next friend, is not to be found in, or deduced from, the provisions of the Civil Procedure Code.—*Venkatanarasayya* by his Father and Guardian *Singa-Râyadu*, Petitioner, *v. Achemma*, Counter-Petitioner, I. L. R., 3 Mad. 3.

402. No suit shall be brought by a pauper to recover compensation for loss of caste, libel, slander, abusive language, or assault.

What suits excepted.

THE above section applies to M. S. C. C.

403. The application for permission to sue by a pauper shall be in writing, and shall contain the particulars required by section 50 in regard to plaints in writing.

Contents of application. suits: a schedule of any moveable or immoveable property belonging to the petitioner, with the estimated value thereof, shall be annexed thereto; and it shall be signed and verified in the manner hereinbefore prescribed for the signing and verification of plaints.

THE above section applies to M. S. C. C.

AN unsuccessful application of a wife to sue for dower *in formâ pauperis*, though opposed by her husband in a counter-petition denying his liability, is not such a demand and refusal of the dower as to constitute a cause of action. The application merely expresses an intention to demand (if allowed to do so) in a particular way.—*Ranee Khajooroonissa v. Ranee Ryeesoonissa*, L. R., 2 Ind. Ap. 235.

404. Notwithstanding anything contained in section 36, the application shall be presented to the Court by the applicant in person, unless he is exempted from appearing in Court under section 640 or section 641, in which case the application may be presented by a duly authorized agent, who can answer all material questions relating to the application, and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person.

THE above section applies to M. S. C. C.

WHERE the pauper is not exempted from appearing in Court, it is imperative that he should present his application in person.—*Ex parte*, *Devgirgura Sumbhagir*, 4 Bom. 91.

WHERE the pauper is exempted from appearing in Court under ss. 640 and 641, and the application is presented by a duly authorized agent,* it is not necessary that such agent should also be a pauper.—*Bhagbut Doss v. Boloram Doss*, 3 W. R. 20. But such agent may be a pleader.—*Kishore Mohun Bose v. Gour Monee Dossee*, 15 W. R. 198. And such pleader must have a special power-of-attorney, not an ordinary vakálatnáma.—*Mussamut Bhugobutty Kooer v. Gunesh Dutt*, 21 W. R. 308.

405. If the application be not framed or presented in the manner prescribed by sections 403 and 404, the Court shall reject it.

THE above section applies to M. S. C. C.

406. If the application be in proper form and duly presented, the Judge may, if he thinks fit, examine the petitioner, or his agent, when the applicant is allowed to appear by agent, regarding the merits of the claim and the property of the applicant.

When the application is presented by an agent, the Court may, if it thinks fit, order that the applicant be examined by a commission in the manner in which the examination of an absent witness may be taken under the provisions of this Code.

THE above section applies to M. S. C. C.

UNDER the first clause the Judge himself must examine, and not delegate any other person to do so.

Rejection of application. **407.** If it appear to the Court

- (a) that the applicant is not a pauper, or
 - (b) that he has, within the two months next before the presentation of the application, disposed of any property fraudulently or with a view to obtain the benefit of this chapter, or
 - (c) that his allegations do not show a right to sue in such Court, or
 - (d) that he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter,
- the Court shall reject the application.

THE above section applies to M. S. C. C.

IT is only the petitioner or his agent who is to be examined under this section, and not his witnesses.—In the matter of *Purkashojha*, Petitioner, 25 W. R. 74.

AN order rejecting an application under the above section is not appealable; nor can it be set aside under the Charter Act.—In the matter of *Shaikh Babur Ali*, 24 W. R. 62; *Khojedoonissa*, Petitioner, 7 W. R. 486.

408. If the Court sees no reason to refuse the application on any of the grounds stated in section 407, it shall fix a day (of which at least ten days' previous notice shall be given to the opposite party and the Government Pleader) for receiving such evidence as the applicant may adduce in proof of his pauperism, and for hearing any evidence which may be adduced in disproof thereof.

THE above section applies to M. S. C. C.

409. On the day so fixed, or as soon thereafter as may be convenient, the Court shall examine the witnesses (if any) produced by either party, and may cross-examine the applicant or his agent, and shall make a memorandum of the substance of their evidence.

The Court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court as herein provided, the applicant is or is not subject to any of the prohibitions specified in section 407.

The Court shall then either allow or refuse to allow the applicant to sue as a pauper.

THE above section applies to M. S. C. C.

THE Judge must himself examine.—In the matter of Eknath bin Madhoba, 1 Bom. 102.

WHERE an application was struck off for want of prosecution, it was held that it might be re-admitted.—In the matter of Rani Umasundari Debi, 5 B. L. R. Ap. 29.

THE examination should extend to all matters referred to in s. 407, and not be limited to the question of pauperism alone.—In the matter of Gunga Adhikarce, Petitioner, 14 W. R. 281 ; 11 B. L. R. Ap. 23.

How far a Court has power to review an order refusing a pauper's application to sue is a matter of doubt.—Mahomed Gazee Chowdry v. Doollub Beebee, 11 W. R. 22 ; but see Khodejoonissa, Petitioner, 7 W. R. 486.

WHERE a party successfully opposed an application to sue as a pauper in a Subordinate Judge's Court on the ground of over-valuation, it was held that he could not afterwards object to the Munsif's jurisdiction.—Brohmo Moyee Dassia v. Anand Chunder Chatterjee, 22 W. R. 120.

WHERE no day was fixed, and the Judge, on default by non-appearance, struck off the application "for the present," it was held that, as there had been no refusal to allow the applicant to sue as a pauper, he might renew his application.—Rajah Bhaj Singh v. Rancee Maha Koonwer, 3 Agra, Mis., 1.

AN ORDER made under Act X. of 1877, s. 409, refusing leave to sue as a pauper, is subject to review under s. 638. The provisions of s. 413 do not affect the right of a person against whom such order has been made to obtain a review. A petitioner applying for such review must file a copy of the order of which he seeks a review, together with a memorandum of objections (ss. 541 and 625).—Adarji Edulji v. Manikji Edulji, 1. L. R., 4 Bom. 414.

410. If the application be granted, it shall be numbered and registered, and shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as a suit instituted under Chapter V., except that the plaintiff shall not be liable to any court-fee (other than fees payable for service of process) in respect of any petition, appointment of a pleader, or other proceeding connected with the suit.

THE above section applies to M. S. C. C.

THE propriety of an order granting leave to sue as a pauper can be contested if the case is appealed. Where a Court gave leave to sue as a pauper (a previous application having been rejected), the suit was dismissed on appeal.—Baboo Beshesur Singh v. Maharaja Muhessur Baksh Singh, S. D., N. W., 1864, p. 189.

A SUPERIOR Court has no power, on appeal or motion, to set aside an application granted under the above section. But if it appears, after the granting of the application, that the order has been improperly obtained, the proper course is to apply to the Court which granted the application.—In the matter of Khodejoonissa, 7 W. R. 486.

411. If the plaintiff succeed in the suit, the Court shall calculate the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper; and such amount shall be a first charge on the subject-matter of the suit, and shall also be recoverable by the Government from any party ordered by the decree to pay the same, in the same manner as costs of suit are recoverable under this Code.

THE above section applies to M. S. C. C.

A CLAIM for fees would be looked upon as a public claim, and is not subject to the ordinary rules for limitation in execution of decrees under Act XIV. of 1859.—*Shami Mohammed v. Munshi Mohammed Ali Khan*, 2 B. L. R., Ap. 22; *Collector of South Arcot v. Thatha Charry*, 8 Mad. 40. In Bengal, however, it has been ruled that, under the new Limitation Act, the ordinary period for execution applies.—*Collector of Beerbhoom v. Sreechurry Chuckerbutty*, 22 W. R. 512.

GOVERNMENT is not entitled to any exemption from the provisions of the Indian Limitation Act, 1877, relating to applications. *Held*, therefore, that an application by Government under s. 411 of the Code of Civil Procedure to recover the amount of court-fees from a party ordered by the decree to pay the same was subject to the provisions of art. 178 of the Indian Limitation Act, 1877.—*Appaya and another (Appellants) v. Collector of Vizagapatam (Respondent)*, I. L. R., 4 Mad. 155.

WHERE Government, after attaching a pauper plaintiff's decree in order to recover the value of stamps, consents to the sale of the decree in execution of another decree against the pauper, and obtains an order by which it secures the chance of any surplus arising from such sale, it cannot afterwards, when the sale is found to yield no surplus, be heard to say, as against the purchaser, that the decree was sold subject to its claim for stamps. The amount of stamps in a pauper case cannot be claimed as a lien or charge upon the decree in favour of Government, but is recoverable in the same manner as costs of suit; Government being, as regards its claim in such a case, in no higher position than an ordinary judgment-creditor.—*Frankisto Roy v. Collector of Moorshedabad*, 15 W. R. 205.

A PAUPER-SUIT for possession was decreed with mesne-profits to be ascertained in execution, costs being also awarded, including the value of stamps due to Government, which was to be paid by plaintiff and defendant in shares proportionate to their ultimate success when the amount of wasilat should be ascertained. As the parties did not choose to go into the inquiry as to mesne-profits, the Court, on a motion by Government, called upon the parties to appear, and, on their refusing to do so, altered its original order with respect to the payment of the stamp-duty, and declared that it should be realized from both the parties jointly. *Held* that the Court had no authority make the second order in favour of Government, and that the proceedings taken in execution thereof were without legal foundation.—*Shostee Churn Roy v. Collector of Chittagong*, 13 W. R. 155.

412. If the plaintiff fails in the suit, or if he is dispaupered, or if the suit is dismissed under section 97 or 98, the Court shall order the plaintiff, or any person made under section 32 co-plaintiff to the suit, to pay the court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper;

and if it find that the suit was frivolous or vexatious, it may also punish the plaintiff with fine not exceeding one hundred rupees, or with imprisonment for a term which may extend to a month, or with both.

THE above section applies to M. S. C. C.

413. An order of refusal made under section 409 to allow the applicant to sue as a pauper shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue; but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right, provided that he first pays the costs (if any) incurred by Government in opposing his application for leave to sue as a pauper.

THE above section applies to M. S. C. C.

AN ORDER made under Act X. of 1877, s. 409, refusing leave to sue as a pauper, is subject to review under s. 623. The provisions of s. 413 do not affect the right of a person against whom such order has been made to obtain a review. A petitioner applying for such review must file a copy of the order of which he seeks a review, together with a memorandum of objections (ss. 541 and 625).—*Adarji Edulji v. Manikji Edulji*, I. L. R., 4 Bom. 414.

WHERE a Court has not refused an application, but has simply returned it in order that the question of pauperism may be tried by a Court of concurrent jurisdiction (*Skinner v. Orde*, 6 All. 225); or where a Court strikes off, "for the present," the application for non-appearance (*Rajah Bhoj Singh v. Ram Maha Koonwer*, 3 Agra, Mis. 1); or where a Court dismisses the application for want of prosecution (in the matter of *Rani Umasundari*, 5 B. L. R. Ap. 29), the above section does not apply, but the application may be renewed.

414. The Court may, on motion by the defendant, or by the Government Pleader, of which one week's notice in writing has been given to the plaintiff, order the plaintiff to be dispaupered—

Dispaupering.

- (a) if he is guilty of vexatious or improper conduct in the course of the suit;
- (b) if it appears that his means are such that he ought not to continue to sue as a pauper, or
- (c) if he has entered into any agreement with reference to the subject-matter of the suit, under which any other person has obtained an interest in such subject-matter.

THE above section applies to M. S. C. C.

THIS is a new section. In the matter of *Khodejjoonissa* (7 W. R. 486) it was held that where it was discovered, after leave was granted to sue *in forma pauperis*, that the applicant should not be permitted to continue to carry on his suit as a pauper, the proper course was to proceed under this section, and not by motion or appeal in the superior Courts.

415. The costs of an application for permission to sue as a pauper and of an inquiry into pauperism are costs in the suit.

Costs.

CHAPTER XXVII.

SUITS BY OR AGAINST GOVERNMENT OR PUBLIC OFFICERS.

416. Suits by or against the Government shall be instituted by or
Suits by or against Secre- against (as the case may be) the Secretary of
tary of State in Council. State for India in Council.

THE above section applies to M. S. C. C. and P. S. C. C.

A SUIT will lie against Government for any breach of contract.—Ross Johnson v. Secretary of State, 2 Hyde 153.

UNDER s. 9, Act I., 1877, no suit will lie against Government for possession of immoveable property without proof of title.

A SUIT will lie against Government for damages for wrongful dismissal of a servant.—Hughes v. Secretary of State for India in Council, 7 B. L. R. 688.

No SUIT will lie against Government for damages sustained by reason of a public ferry being taken up by a Magistrate.—Collector of Patna v. Romanath Tagore, 7 W. R. 191.

THE Government is not bound by a contract entered into by an officer in the Public Works Department in excess of his authority.—Beer Kishore Sahoy v. Government of Bengal, 17 W. R. 497.

WHERE damages were sustained by reason of negligence in the carriage of goods by the Government Bullock Train, the Secretary of State was held liable.—Deputy Postmaster of Bareilly v. Earle, 3 All. 195.

A SUIT against an Agent to the Governor-General, on the part of Government, is substantially a suit against Government, and ought, under s. 9, Act XI. of 1865, to be brought in a Court having jurisdiction at the seat of Government.—Roopun Tewarce v. W. B. Buckle, 10 W. R. 142.

WHERE certain Government coolies let fall an iron-funnel while carrying it from the Kidderpur Dockyard to a steamer in the river, and the noise startled a horse, which rushed over it, and injured itself, it was held that the Secretary of state was liable.—P. and O. Co. v. Secretary of State for India, Bourke 167.

THE acts of a Government officer bind the Government only when he is acting in the discharge of a certain duty within the limits of his authority, or, if he exceed that authority, when the Government in fact or in law, directly or by implication, ratifies the excess.—Collector of Masulipatam v. Cavalry Vencata Narainapah, 2 W. R., P. C., 61.

A SUIT will not be in the High Court against the Collector of Madras residing and carrying on business at Sydapet, in respect of matters arising in Chingleput, though his Deputy Collector carried on business within the local limits, and the orders and proceedings in reference to the matters in question were in his name of office as Collector of Madras.—Subbaraya Mudali and others v. The Government and Cunliffe, 1 Mad. Rep. 286 ; Rundle v. Secretary of State in Council, 1 Hyde 37 ; Hearsay v. Secretary of State, 6 All. 46.

417. Persons being, *ex officio* or otherwise, authorized to act for
Persons authorized to act Government in respect of any judicial pro-
for Government. ceeding, shall be deemed to be the recognized
agents by whom appearances, acts, and applications under this Code may be made or done on behalf of Government.

THE above section applies to M. S. C. C. and P. S. C. C.

418. In suits by the Secretary of State for India in Council, in-
Plaints in suits by Secre- stead of inserting in the plaint the name and
tary of State in Council. description and place of abode of the plaintiff,
it shall be sufficient to insert the words "The Secretary of State for India in Council."

THE above section applies to M. S. C. C. and P. S. C. C.

419. The Government Pleader in any Court shall be the agent of the Government for the purpose of receiving processes against the said Secretary of State in Council issuing out of such Court.

THE above section applies to M. S. C. C. and P. S. C. C.

420. The Court, in fixing the day for the said Secretary of State in Council to answer to the plaint, shall allow a reasonable time for the necessary communication with the Government through the proper channels, and for the issue of instructions to the Government Pleader to appear and answer on behalf of the said Secretary of State in Council or the Government, and may extend the time at its discretion.

THE above section applies to M. S. C. C. and P. S. C. C.

421. The Court may also, in any case in which the Government Pleader is not accompanied by any person on the part of the said Secretary of State in Council, who may be able to answer any material questions relating to the suit, direct the attendance of such a person.

THE above section applies to M. S. C. C. and P. S. C. C.

422. Where the defendant is a public officer, the Court may send a copy of the summons to the head of the office in which the defendant is employed, for the purpose of being served on him, if it appear to the Court that the summons may be most conveniently so served.

THE above section applies to M. S. C. C. and P. S. C. C.

423. If the public officer, on receiving the summons, considers it proper to make a reference to the Government before answering to the plaint, he may apply to the Court to grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channel; and the Court, upon such application, may extend the time for so long as appears to be requisite.

THE above section applies to M. S. C. C. and P. S. C. C.

424. No suit shall be instituted against the said Secretary of State in Council, or against a public officer in respect of an act purporting to be done by him in his official capacity, until the expiration of two months next after notice in writing has been, in the case of the Secretary of State in Council, delivered to, or left at the office of, a Secretary to the Local Government or the Collector of the District, and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, and the name and place of abode of the intending plaintiff; and the plaint must contain a statement that such notice has been so delivered or left.

THE above section applies to M. S. C. C. and P. S. C. C.

A COLLECTOR, when acting under s. 204 of Act XIX. of 1873 as the agent of the Court of Wards in respect of the estate of a disqualified person, is a public officer within the meaning of ss. 2 and 424 of Act X. of 1877, and consequently, when sued for acts done in that capacity, is entitled to the notice of suit required by the latter section.—Collector of Bijnor, Manager of the Estate of Chaudhri Ranjit Singh, a Minor (Defendant), v. Munuvar (Plaintiff), I. L. R., 3 All. 20.

425. No warrant of arrest shall be issued in such suit without the consent in writing of the District Judge.

THE above section applies to M. S. C. C. and P. S. C. C.

426. If the Government undertakes the defence of a suit against a public officer, the Government Pleader, upon being furnished with authority to appear and answer to the plaint, shall apply to the Court, and upon such application the Court shall cause a note of his authority to be entered in the register.

THE above section applies to M. S. C. C. and P. S. C. C.

427. If such application is not made by the Government Pleader on or before the day fixed in the notice for the defendant to appear and answer to the plaint, the case shall proceed as in a suit between private parties, except that the defendant shall not be liable to arrest, nor his property to attachment, otherwise than in execution of a decree.

THE above section applies to M. S. C. C. and P. S. C. C.

428. In a suit against a public officer in respect of such act as aforesaid, the Court shall exempt the defendant from appearing in person when he satisfies the Court that he cannot absent himself from his duty without detriment to the public service.

THE above section applies to M. S. C. C. and P. S. C. C.

429. When the decree is against the said Secretary of State in Council or against a public officer in respect of such act as aforesaid, a time shall be specified in the decree within which it shall be satisfied; and, if the decree is not satisfied within the time so specified, the Court shall report the case for the orders of the Local Government.

Execution shall not issue on any such decree unless it remains unsatisfied for the period of three months computed from the date of the report.

THE above section applies to M. S. C. C. and P. S. C. C.

CHAPTER XXVIII.

SUITS BY ALIENS AND BY OR AGAINST FOREIGN AND NATIVE RULERS.

430. Alien enemies residing in British India with the permission of the Governor-General in Council, and alien friends, may sue in the Courts of British India as if they were subjects of Her Majesty.

No alien enemy residing in British India without such permission, or residing in a foreign country, shall sue in any of such Courts.

Explanation.—Every person residing in a foreign country, the Government of which is at war with the United Kingdom of Great Britain and Ireland, and carrying on business in that country without a license in that behalf under the hand of one of Her Majesty's Secretaries of State or of a Secretary to the Government of India, shall, for the purpose of the second paragraph of this section, be deemed to be an alien enemy residing in a foreign country.

THE above section applies to M. S. C. C. and P. S. C. C.

When foreign State may sue. **431.** A foreign State may sue in the Courts of British India, provided that—

(a) it has been recognized by Her Majesty or the Governor-General in Council, and

(b) the object of the suit is to enforce the private rights of the head or of the subjects of the foreign State.

The Court shall take judicial notice of the fact that a foreign State has not been recognized by Her Majesty or by the Governor-General in Council.

THE above section applies to M. S. C. C. and P. S. C. C.

432. Persons specially appointed by order of Government at the request of any Sovereign Prince or ruling Chief, whether in subordinate alliance with the British Government or otherwise, and whether residing within or without British India, to prosecute or defend any suit on his behalf, shall be deemed to be the recognized agents by whom appearances, acts, and applications under this Code, may be made or done on behalf of such Prince or Chief.

THE above section applies to M. S. C. C. and P. S. C. C.

433. Any such Prince or Chief, and any ambassador or envoy of a foreign State, may, with the consent of Government certified by the signature of one of its Secretaries (but not without such consent), be sued in any competent Court not subordinate to a District Court ;

Such consent shall not be given unless—

(a) the Prince, Chief, ambassador, or envoy has instituted a suit in such Court against the person desiring to sue him ; or

(b) the Prince, Chief, ambassador, or envoy, by himself or another, trades within the local limits of the jurisdiction of such Court ; or

(c) the subject-matter of the suit is immoveable property situate within the said local limits and in the possession of the Prince, Chief, ambassador, or envoy.

No such Prince, Chief, ambassador, or envoy shall be arrested under this Code ; and no decree shall be executed against the property of any such Prince, Chief, ambassador, or envoy, unless with consent of Government certified as aforesaid.

Sovereign Princes, &c., exempt from arrest.

When their property may be attached.

THE above section applies to M. S. C. C. except the first para.

Execution in British India of decrees of Courts of Native States.

434. The Governor-General in Council may, from time to time, by notification in the *Gazette of India*,

(a) declare that the decrees of any Civil or Revenue Courts situate in the territories of any Native-Prince or State in alliance with Her Majesty, and not established by the authority of the Governor-General in Council, may be executed in British India, as if they had been made by the Courts of British India, and

(b) cancel any such declaration.

So long as such declaration remains in force, the said decrees may be executed accordingly.

THE above section applies to M. S. C. C. and P. S. C. C.

CHAPTER XXIX.

SUITS BY AND AGAINST CORPORATIONS AND COMPANIES.

435. In suits by a Corporation, or by a Company authorized to sue and be sued in the name of an officer or of a trustee, the plaintiff may be subscribed and verified on behalf of the Corporation or Company by any director, secretary, or other principal officer of the Corporation or Company, who is able to depose to the facts of the case.

THE above section applies to M. S. C. C. and P. S. C. C.

436. When the suit is against a Corporation, or against a Company authorized to sue and be sued in the name of an officer or of a trustee, the summons may be served—

(a) by leaving it at the registered office (if any) of the Corporation or Company, or

(b) by sending it by post in a letter addressed to such officer or trustee at the office (or, if there be more offices than one, at the principal office in British India) of the Corporation or Company, or

(c) by giving it to any director, secretary, or other principal officer of the Corporation or Company;

and the Court may require the personal appearance of any director, secretary, or other principal officer of the Corporation or Company who may be able to answer material questions relating to the suit.

THE above section applies to M. S. C. C. and P. S. C. C.

For the purposes of summons, a Railway Company must be deemed to dwell at its principal office. An executive engineer of such a Company is not an officer on whom service may be made under cl. c of the above section.—*Hanlon v. The India Branch Railway Company*, 1 Hyde 197.

CHAPTER XXX.

SUITS BY AND AGAINST TRUSTEES, EXECUTORS, AND ADMINISTRATORS.

437. In all suits concerning property vested in a trustee, executor, or administrator, when the contention is between the persons beneficially interested in such property and a third person, the trustee, executor, or administrator shall represent the

Representation of beneficiaries in suits concerning property vested in trustees, &c.

persons so interested, and it shall not ordinarily be necessary to make them parties to the suit. But the Court may, if it thinks fit, order them or any of them to be made such parties.

THE above section applies to M. S. C. C. and P. S. C. C.

438. When there are several executors or administrators, they shall

Joinder of executors and all be made parties to a suit against one or administrators. more of them :

Provided that executors who have not proved their testator's will, and executors and administrators beyond the local limits of the jurisdiction of the Court, need not be made parties.

THE above section applies to M. S. C. C. and P. S. C. C.

439. Unless the Court directs otherwise, the husband of a married

Husband of married exe- administratrix or executrix shall not be a party cutrix not to join. to a suit by or against her.

THE above section applies to M. S. C. C. and P. S. C. C.

CHAPTER XXXI.

SUITS BY AND AGAINST MINORS, AND PERSONS OF UNSOUND MIND.

440. Every suit by a minor shall be instituted in his name by an

Minor must sue by next adult person, who, in such suit, shall be called friend. the next friend of the minor, and may be ordered to pay any costs in the suit as if he were the plaintiff.

Costs.

THE above section applies to M. S. C. C. and P. S. C. C.

441. Every application to the Court on behalf of a minor (other

Applications to be made than an application under section 449) shall by next friend or guardian be made by his next friend, or his guardian for *ad litem*. the suit.

THE above section applies to M. S. C. C. and P. S. C. C.

442. If a plaint be filed by or on behalf of a minor without a next

Plaint filed without next friend, the defendant may apply to have the friend to be taken off file. plaint taken off the file, with costs to be paid by the pleader or other person by whom it was presented. Notice of

Costs.

such application shall be given to such person by the defendant ; and the Court, after hearing his objections (if any), may make such order in the matter as it thinks fit.

THE above section applies to M. S. C. C. and P. S. C. C.

443. Where the defendant to a suit is a minor, the Court, on being

Guardian *ad litem* to be satisfied of the fact of his minority, shall appointed by Court. point a proper person to be guardian for the suit for such minor, to put in the defence for such minor, and generally to act on his behalf in the conduct of the case.

A guardian for the suit is not a guardian of person or property within the meaning of the Indian Majority Act, 1875, section 3.

THE above section applies to M. S. C. C. and P. S. C. C.

WHERE no administrator of the estate of a minor is appointed under Act XX. of 1864, there is no objection to the appointment of a guardian *ad litem* under s. 443 of the Civil Procedure Code (Act X. of 1877) (as amended by Act XII. of 1879) for the purpose of defending a suit against a minor. Act XX. of 1864, s. 2, has no bearing on the case of a next friend or guardian *ad litem* not claiming charge of the minor's estate. Neither Act XX. of 1864, nor the Civil Procedure Code (Act X. of 1877) (as amended by Act XII. of 1879), empowers any Court to appoint a person, against his or her will, to be a next friend, guardian *ad litem*, administrator of the estate, or guardian of the person of the minor. S. 458 of the Civil Procedure Code (Act X. of 1877) is not, so far as regards payment of costs, applicable to any person appointed to act as guardian *ad litem* without his previous assent. S. 3, cl. b, of Act XV. of 1880, preserves jurisdiction to a Court to try a suit against a minor, notwithstanding the appointment of one of its officers to be the minor's guardian *ad litem*. The decision in *Mohan Ishwar v. Haku Rupa* (I. L. R., 4 Bom. 638) is superseded by Act XV. of 1880, s. 3, cl. b, in so far as that decision affected officers of the Court appointed guardians *ad litem* under s. 456 of Act X. of 1877 as amended by Act XII. of 1879. Inconvenience, pointed out, of introducing into acts relating, and instituted as relating, to special jurisdiction only, provisions affecting civil procedure generally.—*Jadow Mulji (Plaintiff) v. Chhagan Raichand, deceased, by his son Jamna, minor, by his guardian ad litem Wannali Harjivan (Defendant)*, I. L. R., 5 Bom. 306.

444. Every order made in a suit or on any application before the

Order obtained without
next friend or guardian may
be discharged.

Court, in or by which a minor is in any way
concerned or affected, without such minor being
represented by a next friend or guardian for
the suit as the case may be, may be discharged, and, if the pleader of
the party at whose instance such order was obtained knew, or might rea-
sonably have known, the fact of such minority
with costs to be paid by such pleader.

Costs.

THE above section applies to M. S. C. C. and P. S. C. C.

445. Any person being of sound mind and full age may act as next

Who may be next friend.

friend of a minor, provided his interest is not
adverse to that of such minor, and he is not a
defendant in the suit.

THE above section applies to M. S. C. C. and P. S. C. C.

446. If the interest of the next friend of a minor is adverse to

Removal of next friend.

that of such minor, or if he is so connected
with a defendant whose interest is adverse to

that of the minor, as to make it unlikely that the minor's interest will
be properly protected by him, or if he does not do his duty, or, pend-
ing the suit, ceases to reside within British India, or for any other suffi-
cient cause, application may be made on behalf of the minor or by a
defendant for his removal; and the Court (if satisfied of the sufficiency
of the cause assigned) may order the next friend to be removed accord-
ingly.

THE above section applies to M. S. C. C. and P. S. C. C.

447. Unless otherwise ordered by the Court, a next friend shall not

Retirement of next friend.

retire at his own request without first procuring
a fit person to be put in his place, and giving

security for the costs already incurred.

The application for the appointment of a new next friend shall be

Application for appoint-
ment of new next friend.

supported by affidavit showing the fitness of
the person proposed, and also that he has no

interest adverse to the minor.

THE above section applies to M. S. C. C. and P. S. C. C.

Stay of proceedings on death or removal of next friend.

448. On the death or removal of the next friend of a minor, further proceedings shall be stayed until the appointment of a next friend in his place.

THE above section applies to M. S. C. C. and P. S. C. C.

449. If the pleader of such minor omits, within reasonable time, Application for appointment of new next friend. to take steps to get a new next friend appointed, any person interested in the minor or the matter at issue may apply to the Court for the appointment of one, and the Court may appoint such person as it thinks fit.

THE above section applies to M. S. C. C. and P. S. C. C.

Course to be followed by minor plaintiff or applicant on coming of age.

450. A minor plaintiff, or a minor not a party to a suit on whose behalf an application is pending, on coming of age must elect whether he will proceed with the suit or application.

THE above section applies to M. S. C. C. and P. S. C. C.

451. If he elects to proceed with it, he shall apply for an order discharging the next friend, and for leave to proceed in his own name.

Where he elects to proceed. The title of the suit or application shall, in such case, be corrected so as to read thenceforth thus:

“A. B., late a minor, by C. D., his next friend, but now of full age.”

THE above section applies to M. S. C. C. and P. S. C. C.

452. If he elects to abandon the suit or application, he shall, if a sole plaintiff, or sole applicant, apply for an order to dismiss the suit or application on repayment of the costs incurred by the defendant or respondent, or which may have been paid by his next friend.

Where he elects to abandon.

Costs.

THE above section applies to M. S. C. C. and P. S. C. C.

Making and proving applications under sections 451, 452.

453. Any application under section 451 or section 452 may be made *ex parte*; and it must be proved by affidavit that the late minor has attained his full age.

THE above section applies to M. S. C. C. and P. S. C. C.

454. A minor co-plaintiff, on coming of age, and desiring to repudiate the suit, must apply to have his name struck out as co-plaintiff; and the Court, if it finds that he is not a necessary party, shall dismiss him from the suit on such terms as to costs or otherwise as it thinks fit.

Notice of the application shall be served on the next friend, as well as on the defendant; and it must be proved by affidavit that the late minor has attained his full age. The costs of all parties of such application, and of all or any proceedings theretofore had in the suit, shall be paid by such persons as the Court directs.

Costs.

If the late minor be a necessary party to the suit, the Court may direct him to be made a defendant.

THE above section applies to M. S. C. C. and P. S. C. C.

455. If any minor, on attaining majority, can prove, to the satisfaction of the Court, that a suit instituted in his name by a next friend was unreasonable or improper, he may, if a sole plaintiff, apply to have the suit dismissed.

Notice of the application shall be served on all the parties concerned: and the Court, upon being satisfied of such unreasonableness or impropriety, may grant the application, and order the next friend to pay the costs of all parties in respect of the application and of anything done in the suit.

THE above section applies to M. S. C. C. and P. S. C. C.

456. An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff. Such application must be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in question in the suit adverse to that of the minor, and that he is a fit person to be so appointed.

Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian: Provided that he has no interest adverse to that of the minor.

THE above section applies to M. S. C. C. and P. S. C. C.

A SUBORDINATE Judge who, under Act X. of 1877, s. 456, as amended by Act XII. of 1879, s. 73, appoints the nazir or any other officer of his Court to act as guardian of a minor plaintiff or defendant in a suit in his Court, has no jurisdiction to hear it, and pass a decree against that officer as guardian *ad litem* of the minor.—*Mohan Ishwar v. Haku Rupa*, I. L. R., 4 Bom. 638. See the following ruling.

WHERE no administrator of the estate of a minor is appointed under Act XX. of 1864, there is no objection to the appointment of a guardian *ad litem* under s. 443 of the Civil Procedure Code (Act X. of 1877) (as amended by Act XII. of 1879) for the purpose of defending a suit against a minor. Act XX. of 1864, s. 2, has no bearing on the case of a next friend or guardian *ad litem* not claiming charge of the minor's estate. Neither Act XX. of 1864, nor the Civil Procedure Code (Act X. of 1877) (as amended by Act XII. of 1879), empowers any Court to appoint a person, against his or her will, to be a next friend, guardian *ad litem*, administrator of the estate, or guardian of the person of the minor. S. 458 of the Civil Procedure Code (Act X. of 1877) is not, so far as regards payment of costs, applicable to any person appointed to act as guardian *ad litem* without his previous assent. S. 3, cl. b, of Act XV. of 1880, preserves jurisdiction to a Court to try a suit against a minor, notwithstanding the appointment of one of its officers to be the minor's guardian *ad litem*. The decision in *Mohan Ishwar v. Haku Rupa* (I. L. R., 4 Bom. 638) is superseded by Act XV. of 1880, s. 3, cl. b, in so far as that decision affected officers of the Court appointed guardians *ad litem* under s. 456 of Act X. of 1877 as amended by Act XII. of 1879. Inconvenience, pointed out, of introducing into acts relating, and instituted as relating, to special jurisdiction only, provisions affecting civil procedure generally.—*Jadow Mulji (Plaintiff) v. Chhagan Raichand*, deceased, by his son Janna, minor, by his guardian *ad litem* Wammali Harjivan (Defendant), I. L. R., 5 Bom. 306.

457. A co-defendant of sound mind and of full age may be appointed guardian for the suit, if he has no interest adverse to that of the minor; but neither a plaintiff, nor a married woman, can be so appointed.

THE above section applies to M. S. C. C. and P. S. C. C.

- 458.** If the guardian for the suit of a minor defendant does not do his duty, or if other sufficient ground be made to appear, the Court may remove him, and may order him to pay such costs as may have been been occasioned to any party by his breach of duty.
- Guardian neglecting his duty may be removed.
- Costs.

THE above section applies to M. S. C. C. and P. S. C. C.

THE Civil Procedure Code does not authorize a Court to decree costs against the guardian of a defendant except in the case referred to in s. 458.—Narasimha Ráu (Defendant), Appellaut, v. Lákshmiapati Ráu and others (Plaintiff), Respondents, I. L. R., 3 Mad. 263.

WHERE no administrator of the estate of a minor is appointed under Act XX. of 1864, there is no objection to the appointment of a guardian *ad litem* under s. 443 of the Civil Procedure Code (Act X. of 1877) (as amended by Act XII. of 1879) for the purpose of defending a suit against a minor. Act XX. of 1864, s. 2, has no bearing on the case of a next friend or guardian *ad litem* not claiming charge of the minor's estate. Neither Act XX. of 1864, nor the Civil Procedure Code (Act X. of 1877) (as amended by Act XII. of 1879), empowers any Court to appoint a person, against his or her will, to be a next friend, guardian *ad litem*, administrator of the estate, or guardian of the person of the minor. S. 458 of the Civil Procedure Code (Act X. of 1877) is not, so far as regards payment of costs, applicable to any person appointed to act as guardian *ad litem* without his previous assent. S. 3, cl. b, of Act XV. of 1880, preserves jurisdiction to a Court to try a suit against a minor, notwithstanding the appointment of one of its officers to be the minor's guardian *ad litem*. The decision in Mohan Ishwar v. Haku Rupa (I. L. R., 4 Bom. 638) is superseded by Act XV. of 1880, s. 3, cl. b, in so far as that decision affected officers of the Court appointed guardians *ad litem* under s. 456 of Act X. of 1877 as amended by Act XII. of 1879. Inconvenience, pointed out, of introducing into acts relating, and instituted as relating, to special jurisdiction only, provisions affecting civil procedure generally.—Jadow Mulji (Plaintiff) v. Chhagan Raichand, deceased, by his son Jamna, minor, by his guardian *ad litem* Wammali Harjivan (Defendant), I. L. R., 5 Bom. 306.

Appointment in place of guardian dying *pendente lite*.

- 459.** If the guardian for the suit dies pending such suit, or is removed by the Court, the Court shall appoint a new guardian in his place.

THE above section applies to M. S. C. C. and P. S. C. C.

- 460.** When the enforcement of a decree is applied for against the the heir or representative, being a minor, of a deceased party, a guardian for the suit of such minor shall be appointed by the Court, and the decree-holder shall serve on such guardian notice of such application.
- Guardian *ad litem* of minor representative of deceased judgment-debtor.

THE above section applies to M. S. C. C. and P. S. C. C.

- 461.** No sum of money or other thing shall be received or taken by a next friend or guardian for the suit on behalf of a minor, at any time before decree or order, unless he has first obtained the leave of the Court, and given security to its satisfaction that such money or other thing shall be duly accounted for to, and held for the benefit of, such minor.
- Before decree, next friend or guardian *ad litem* not to receive money without leave of Court and giving security.

THE above section applies to M. S. C. C. and P. S. C. C.

462. No next friend or guardian for the suit shall, without the leave of the Court, enter into any agreement or compromise on behalf of a minor, with reference to the suit in which he acts as next friend or guardian.

Next friend or guardian
ad litem not to compromise
without leave of Court.

Any such agreement or compromise entered into without the leave of the Court shall be voidable against all parties other than the minor.

Compromise without
leave voidable.

THE above section applies to M. S. C. C. and P. S. C. C.

THE conditions of s. 462 of the Civil Procedure Code, requiring the sanction of the Court to compromises entered into by the guardian *ad litem* of an infant suitor, are not sufficiently complied with by the Court passing a decree in the terms of a compromise presented by the guardian *ad litem*. A decree passed under such circumstances should be set aside.—Rájagopal Takkaya Naiker and two others, minors, by their guardian Subramanya Ayyar (Petitioners), *v.* Muthupalem Chetti and another (Counter-Petitioners), I. L. R., 3 Mad. 103.

463. The provisions contained in sections 440 to 462 (both inclusive) shall, *mutatis mutandis*, apply in the case of persons of unsound mind, adjudged to be so under Act No. XXXV. of 1858, or under any other law for the time being in force.

Application of sections
440 to 462 to persons of
unsound mind.

THE above section applies to M. S. C. C. and P. S. C. C.

464. Nothing in sections 442 to 462 applies to any minor or person of unsound mind, for whose person or property a guardian or manager has been appointed by the Court of Wards, or by the Civil Court under any local law.

Wards of Court.

THE above section applies to M. S. C. C. and P. S. C. C.

CHAPTER XXXII.

SUITS BY AND AGAINST MILITARY MEN.

465. When any officer or soldier actually serving the Government in a military capacity is a party to a suit, and cannot obtain leave of absence for the purpose of prosecuting or defending the suit in person, he may authorize any person to sue or defend in his stead.

Officers or soldiers who
cannot obtain leave may
authorize any person to sue
or defend for them.

The authority shall be in writing, and shall be signed by the officer or soldier in the presence of (a) his commanding officer, or the next subordinate officer, if the party be himself the commanding officer, or (b) where the officer or soldier is serving in military staff employment, the head or other superior officer of the office in which he is employed. Such commanding or other officer shall countersign the authority, which shall be filed in Court.

When so filed, the countersignature shall be sufficient proof that the authority was duly executed, and that the officer or soldier by whom it was granted could not obtain leave of absence for the purpose of prosecuting or defending the suit in person.

Explanation.—In this chapter the expression ‘commanding officer’ means the officer in actual command for the time being of any regiment, corps, detachment, or dépôt to which the officer or soldier belongs.

THE above section applies to M. S. C. C. and P. S. C. C.

466. Any person authorized by an officer or a soldier to prosecute or defend a suit in his stead may prosecute or defend it in person in the same manner as the officer or soldier could do if present; or he may appoint a pleader to prosecute or defend the suit on behalf of such officer or soldier.

Person so authorized may act personally or appoint pleader.

THE above section applies to M. S. C. C. and P. S. C. C.

467. Processes served upon any person authorized by an officer or a soldier, as in section 465, or upon any pleader appointed as aforesaid by such person to act for, or on behalf of, such officer or soldier, shall be as effectual as if they had been served on the party in person or on his pleader.

Service on person so authorized, or on his pleader, to be good service.

THE above section applies to M. S. C. C. and P. S. C. C.

468. When an officer or a soldier is a defendant, the Court shall send a copy of the summons to his commanding officer for the purpose of being served on him.

Service on officers and soldiers.

The officer to whom such copy is sent, after causing it to be served on the person to whom it is addressed, if practicable, shall return it to the Court with the written acknowledgment of such person endorsed thereon.

If, from any cause, the copy cannot be so served, it shall be returned to the Court by which it was sent, with information of the cause which has prevented the service.

THE above section applies to M. S. C. C. and P. S. C. C.

469. If, in the execution of a decree, a warrant of arrest or other process is to be executed within the limits of a cantonment, garrison, military station, or military bazar, the officer charged with the execution of such warrant or other process shall deliver the same to the commanding officer.

Execution of warrant of arrest in cantonments, &c.

The commanding officer shall back the warrant or other process with his signature, and, in the case of a warrant of arrest, if the person named therein is within the limits of his command, shall cause him to be arrested and delivered to the officer so charged.

THE above section applies to M. S. C. C. and P. S. C. C.

CHAPTER XXXIII.

INTERPLEADER.

470. When two or more persons claim adversely to one another the same payment or property from another person, whose only interest therein is that of a mere stakeholder, and who is ready to render it to the right owner, such

When interpleader-suit may be instituted.

stakeholder may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to whom the payment or property should be made or delivered, and of obtaining indemnity for himself:

Provided that, if any suit is pending in which the rights of all parties can properly be decided, the stakeholder shall not institute a suit of interpleader.

THE above section applies to M. S. C. C. and P. S. C. C.

Plaint in such suit.

471. In every suit of interpleader the plaintiff must, in addition to the other statements necessary for plaints, state—

(a) that the plaintiff has no interest in the thing claimed otherwise than as a mere stakeholder;

(b) the claims made by the defendants severally; and

(c) that there is no collusion between the plaintiff and any of the defendants.

THE above section applies to M. S. C. C. and P. S. C. C.

472. When the thing claimed is capable of being paid into Court or placed in the custody of the Court, the plaintiff must so pay or place it before he can be entitled to any order in the suit.

THE above section applies to M. S. C. C. and P. S. C. C.

Procedure at first hearing.

473. At the first hearing the Court may—

(a) declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs, and dismiss him from the suit;

or, if it thinks that justice or convenience so require,

(b) retain all parties until the final disposal of the suit;

and, if it finds that the admissions of the parties or other evidence enable it,

(c) adjudicate the title to the thing claimed: or else it may

(d) direct the defendants to interplead one another by filing statements and entering into evidence for the purpose of bringing their respective claims before the Court, and shall adjudicate on such claims.

THE above section applies to M. S. C. C. and P. S. C. C.

474. Nothing in this chapter shall be taken to enable agents to sue their principals, or tenants to sue their landlords, for the purpose of compelling them to interplead with any persons other than persons making claim through such principals or landlords.

When agents and tenants may institute interpleader-suits.

Illustrations.

(a.) A deposits a box of jewels with B as his agent. C alleges that the jewels were wrongfully obtained from him by A, and claims them from B. B cannot institute an interpleader-suit against A and C.

(b.) A deposits a box of jewels with B as his agent. He then writes to C for the purpose of making the jewels a security for a debt due from himself to C. A afterwards alleges that C's debt is satisfied, and C alleges the contrary. Both claim the jewels from B. B may institute an interpleader suit against A and C.

THE above section applies to M. S. C. C. and P. S. C. C.

475. When the suit is properly instituted, the Court may provide for the plaintiff's costs by giving him a charge on the thing claimed or in some other effectual way.

THE above section applies to M. S. C. C. and P. S. C. C.

476. If any of the defendants in an interpleader-suit is actually suing the stakeholder in respect of the subject of such suit, the Court in which the suit against the stakeholder is pending shall, on being duly informed by the Court which passed the decree in the interpleader-suit in favour of the stakeholder that such decree has been passed, stay the proceedings as against him; and his costs in the suit so stayed may be provided for in such suit; but if, and so far as, they are not provided for in that suit, they may be added to his costs incurred in the interpleader-suit.

THE above section applies to M. S. C. C. and P. S. C. C.

PART IV.

PROVISIONAL REMEDIES.

CHAPTER XXXIV.

OF ARREST AND ATTACHMENT BEFORE JUDGMENT.

A.—Arrest before Judgment.

477. If at any stage of any suit, other than a suit for the possession of immoveable property, the plaintiff satisfies the Court by affidavit or otherwise—

that the defendant, with intent to avoid or delay the plaintiff, or to avoid any process of the Court, or to obstruct or delay the execution of any decree that may be passed against him,

(a) has absconded or left the jurisdiction of the Court, or

(b) is about to abscond or to leave the jurisdiction of the Court, or

(c) has disposed of or removed from the jurisdiction of the Court his property or any part thereof, or

that the defendant is about to leave British India under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the plaintiff may apply to the Court that security be taken for the appearance of the defendant to answer any decree that may be passed against him in the suit.

THE above section applies to M. S. C. C. (except as regards immoveable property) and to P. S. C. C. (except as regards the attachment of immoveable property).

Order to bring up defendant to show cause why he should not give security.

478. If the Court, after examining the applicant, and making such further investigation as it thinks fit, is satisfied—

that the defendant, with any such intent as aforesaid,

(a) has absconded or left the jurisdiction of the Court, or

(b) is about to abscond or to leave the jurisdiction of the Court, or

(c) has disposed of or removed from the jurisdiction of the Court his property or any part thereof, or

that the defendant is about to leave British India under the circumstances last aforesaid,

the Court may issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance.

THE above section applies to M. S. C. C. (except as regards immoveable property) and to P. S. C. C. (except as regards the attachment of immoveable property).

479. If the defendant fail to show such cause, the Court shall

If defendant fail to show cause, Court may order him to make deposit or give security.

order him either to deposit in Court money or other property sufficient to answer the claim against him, or to give security for his appearance at any time when called upon while the

suit is pending, and until execution or satisfaction of any decree that may be passed against him in the suit.

The surety shall bind himself, in default of such appearance, to pay any sum of money which the defendant may be ordered to pay in the suit.

THE above section applies to M. S. C. C. (except as regards immoveable property) and to P. S. C. C. (except as regards the attachment of immoveable property).

Procedure in case of application by surety to be discharged.

480. The surety for the appearance of the defendant may at any time apply to the Court in which he became such surety to be discharged from his obligation.

On such application being made, the Court shall summon the defendant to appear, or, if it thinks fit, may issue a warrant for his arrest in the first instance.

On the appearance of the defendant pursuant to the summons or warrant, or on his voluntary surrender, the Court shall direct the surety to be discharged from his obligation, and shall call upon the defendant to find fresh security.

THE above section applies to M. S. C. C. (except as regards immoveable property) and to P. S. C. C. (except as regards the attachment of immoveable property).

481. If the defendant fail to comply with any order under section

Procedure where defendant fails to give security or find fresh security.

479 or section 480, the Court may commit him to jail until the decision of the suit, or, if judgment be given against the defendant,

until the execution of the decree: Provided that no person shall be imprisoned under this section in any case for a longer period than six months, nor for a longer period than six weeks when the amount or value of the subject-matter of the suit does not exceed fifty rupees:

Provided that no person shall be detained in prison under this section after he has complied with such order.

THE above section applies to M. S. C. C. (except as regards immoveable property) and to P. S. C. C. (except as regards the attachment of immoveable property).

482. The provisions of section 339 as to allowances payable for the subsistence of judgment-debtors shall apply to all defendants arrested under this chapter.

THE above section applies to M. S. C. C. (except as regards immoveable property) and to P. S. C. C. (except as regards the attachment of immoveable property).

B.—Attachment before Judgment.

Application before judgment for security from defendant to satisfy decree, and, in default, for attachment of property.

483. If, at any stage of any suit, the plaintiff satisfies the Court by affidavit or otherwise that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,

(a) is about to dispose of the whole or any part of his property, or to remove the same from the jurisdiction of the Court in which the suit is pending, or

(b) has quitted the jurisdiction of the Court, leaving therein property belonging to him,

the plaintiff may apply to the Court to call upon the defendant to furnish security to satisfy any decree that may be passed against him in such suit, and, on his failing to give such security, to direct that any portion of his property within the jurisdiction of the Court shall be attached until the further order of the Court.

The application shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.

THE above section applies to M. S. C. C. (except as regards immoveable property) and to P. S. C. C. (except as regards the attachment of immoveable property).

484. If the Court, after examining the applicant, and making any further investigation which it thinks fit, is satisfied that the defendant is about to dispose of or remove his property, with intent to obstruct or delay the execution of any decree that may be passed against him in the suit, or that he has, with such intent, quitted the jurisdiction of the Court, leaving therein property belonging to him, the Court may require him, within a time to be fixed by the Court, either to furnish security in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

The Court may also, in the order, direct the conditional attachment of the whole or any portion of the property specified in the application.

THE above section applies to M. S. C. C. (except as regards immoveable property) and to P. S. C. C. (except as regards the attachment of immoveable property).

THE defendants were, on the 10th of March 1881, called upon, under s. 484 of the Civil Procedure Code (Act X. of 1877), to furnish security for the satisfaction of a decree that the plaintiff might obtain against them, or to show cause, on the 28th March 1881, why security should not be furnished. To this direction the order was appended, which is provided by the form at the end of the Code of Civil Procedure, for a provisional attachment under s. 484. The defendants, to avoid the attachment, gave security, on the 12th March 1881, for satisfaction of the decree, and the attachment was not carried out. On the 28th March 1881, they showed cause why security should not be furnished; but the Subordinate Judge, as security had been furnished, thought the matter was at an end, and that he could not cancel the security-bond. *Held* that the Subordinate Judge was wrong; the security so given was really not the security expressly provided under s. 484, and did not preclude the defendants from showing cause why no security should be furnished.—*Lotlikar (Applicant) v. Lotlikar (Respondent)*, I. L. R., 5 Bom. 643.

485. If the defendant fail to show cause why he should not furnish

Attachment if cause not shown or security not furnished.

security, or fail to furnish the security required, within the time fixed by the Court, the Court may order that the property specified in the application, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, shall be attached.

If the defendant show such cause or furnish the required security,

Withdrawal of attachment.

and the property specified in the application or any portion of it has been attached, the Court shall order the attachment to be withdrawn.

THE above section applies to M. S. C. C. (except as regards immoveable property) and to P. S. C. C. (except as regards the attachment of immoveable property).

486. The attachment shall be made in the manner herein provided

Mode of making attachment.

for the attachment of property in execution of a decree for money.

THE above section applies to M. S. C. C. (except as regards immoveable property) and to P. S. C. C. (except as regards the attachment of immoveable property).

487. If any claim be preferred to the property attached before

Investigation of claims to property attached before judgment.

judgment, such claim shall be investigated in the manner hereinbefore provided for the investigation of claims to property attached in execution of a decree for money.

THE above section applies to M. S. C. C. (except as regards immoveable property) and to P. S. C. C. (except as regards the attachment of immoveable property).

488. When an order of attachment before judgment is passed, the

Removal of attachment when security furnished or suit dismissed.

Court which passed the order shall remove the attachment whenever the defendant furnishes the security required, together with security for the costs of the attachment, or when the suit is dismissed.

THE above section applies to M. S. C. C. (except as regards immoveable property) and to P. S. C. C. (except as regards the attachment of immoveable property).

489. Attachment before judgment shall not affect the rights, exist-

Attachment not to affect rights of strangers, or bar decree-holder from applying for sale.

ing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree.

THE above section applies to M. S. C. C. (except as regards immoveable property) and to P. S. C. C. (except as regards the attachment of immoveable property).

490. Where property is under attachment by virtue of the provisions of this chapter, and the decree is given in favour of the plaintiff, it shall not be necessary to re-attach the property in execution of such decree.

Property attached under chapter not to be re-attached in execution of decree.

THE above section applies to M. S. C. C. (excepts as regards immoveable property) and to P. S. C. C. (except as regards the attachment of immoveable property).

C.—Compensation for improper Arrests or Attachments.

491. If, in any suit in which an arrest or attachment has been effected, it appears to the Court that such arrest or attachment was applied for on insufficient grounds,

Compensation for obtaining arrest or attachment on insufficient grounds.

or if the suit of the plaintiff fails, and it appears to the Court that there was no probable ground for instituting the suit,

the Court may, on the application of the defendant, award against the plaintiff in its decree such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury caused to him by the arrest or attachment :

Provided that the Court shall not award under this section a larger amount than it might decree in a suit for compensation.

Proviso.

An award under this section shall bar any suit for compensation in respect of such arrest or attachment.

THE above section applies to M. S. C. C. (except as regards immoveable property) and to P. S. C. C. (except as regards the attachment of immoveable property).

CHAPTER XXXV.

OF TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS.

A.—Temporary Injunctions.

Cases in which temporary injunction may be granted.

492. If, in any suit, it is proved by affidavit or otherwise—

(a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or is about, to remove or dispose of his property with intent to defraud his creditors,

the Court may, by order, grant a temporary injunction to restrain such act, or give such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the Court thinks fit, or refuse such injunction or other order.

493 In any suit for restraining the defendant from committing a breach of contract or other injury, whether compensation be claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

The Court may, by order, grant such injunction on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit, or refuse the same.

In case of disobedience, an injunction granted under this section or section 492 may be enforced by the imprisonment of the defendant for a term not exceeding six months, or the attachment of his property, or both.

No attachment under this section shall remain in force for more than one year, at the end of which time, if the defendant has not obeyed the injunction, the property attached may be sold, and out of the proceeds the Court may award to the plaintiff such compensation as it thinks fit, and may pay the balance (if any) to the defendant.

494. The Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party.

495. An injunction directed to a Corporation or public Company is binding not only on the Corporation or Company itself, but also on all members and officers of the Corporation or Company whose personal action it seeks to restrain.

496. Any order for an injunction may be discharged, or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order.

497. If it appears to the Court that an injunction which it has granted was applied for on insufficient grounds, or

if, after the issue of the injunction, the suit is dismissed, or judgment is given against the plaintiff by default or otherwise, and it appears to the Court that there was no probable ground for instituting the suit, the Court may, on the application of the defendant, award against the plaintiff in its decree such sum, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury caused to him by the issue of the injunction :

Provided that the Court shall not award under this section a larger amount than it might decree in a suit for compensation.

An award under this section shall bar any suit for compensation in respect of the issue of the injunction.

B.—Interlocutory Orders.

498. The Court may, on the application of any party to a suit,

Power to order interim order the sale, by any person named in such
 sale of perishable articles. order, and in such manner, and on such terms
 as it thinks fit, of any moveable property, being the subject of such
 suit, which is subject to speedy and natural decay.

THE above section applies to P. S. C. C.

Power to make order for
 detention, &c., of subject-
 matter, and to authorize
 entry, taking of samples
 and experiments.

499. The Court may, on the application
 of any party to a suit, and on such terms as it
 thinks fit,

(a) make an order for the detention, preservation, or inspection of
 any property being the subject of such suit ;

(b) for all or any of the purposes aforesaid, authorize any person to
 enter upon or into any land or building in the possession of any other
 party to such suit, and

(c) for all or any of the purposes aforesaid, authorize any samples
 to be taken, or any observation to be made or experiment to be tried,
 which may seem necessary or expedient for the purpose of obtaining
 full information or evidence.

The provisions hereinbefore contained as to execution of process
 shall apply, *mutatis mutandis*, to persons authorized to enter under
 this section.

THE above section applies to P. S. C. C.

500. An application by the plaintiff for an order under section 498

Application for such or or section 499 may be made after notice in
 ders to be after notice. writing to the defendant at any time after ser-
 vice of the summons.

An application by the defendant for a like order may be made
 after notice in writing to the plaintiff, and at any time after the appli-
 cant has appeared.

THE above section applies to P. S. C. C.

501. When land paying revenue to Government, or a tenure liable

When party may be put to sale, is the subject of a suit, if the party in
 in immediate possession of possession of such land or tenure neglects to
 land the subject of suit. pay the Government-revenue, or the rent due
 to the proprietor of the tenure, as the case may be, and such land or
 tenure is consequently ordered to be sold, any other party to the suit
 claiming to have an interest in such land or tenure may, upon payment
 of the revenue or rent due previously to the sale (and with or without
 security at the discretion of the Court), be put in immediate possession
 of the land or tenure ;

and the Court in its decree may award against the defaulter the
 amount so paid, with interest thereupon at such rate as the Court
 thinks fit, or may charge the amount so paid, with interest thereupon
 at such rate as the Court orders, in any adjustment of accounts which
 may be directed in the decree passed in the suit.

502. When the subject-matter of a suit is money or some other thing capable of delivery, and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court.

THE above section applies to P. S. C. C.

CHAPTER XXXVI.

APPOINTMENT OF RECEIVERS.

503. Whenever it appears to the Court to be necessary for the realization, preservation, or better custody or management of any property, moveable or immoveable, the subject of a suit, or under attachment, the Court may, by order—

- (a) appoint a Receiver of such property, and, if need be,
 - (b) remove the person in whose possession or custody the property may be from the possession or custody thereof;
 - (c) commit the same to the custody or management of such Receiver; and
 - (d) grant to such Receiver such fee or commission on the rents and profits of the property by way of remuneration, and all such powers as to bringing and defending suits, and for the realization, management, protection, preservation, and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of instruments in writing, as the owner himself has, or such of those powers as the Court thinks fit.
- Receiver's liabilities. Every Receiver so appointed shall—
- (e) give such security (if any) as the Court thinks fit duly to account for what he shall receive in respect of the property;
 - (f) pass his accounts at such periods and in such form as the Court directs;
 - (g) pay the balance due from him thereon as the Court directs; and
 - (h) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

Nothing in this section authorizes the Court to remove from the possession or custody of property under attachment any person whom the parties to the suit, or some or one of them, have or has not a present right so to remove.

THE above section applies to M. S. C. C. and P. S. C. C.

By a decree in an administration-suit, A was appointed receiver "to manage the estate." A died, and by a subsequent order B was appointed receiver. One of the defendants in the suit applied to have B removed from the office of receiver on the ground of his alleged mismanagement of the estate. The application was refused.

Held that the order of refusal was appealable, whether the former Code or the present Code of Civil Procedure was deemed to be applicable, being an order made in respect of a question arising between the parties to a suit relating to the execution of the decree.—*Mithibái (Plaintiff) v. Limji Nowroji Banáji and others (Defendants)*; *Harrivullbhdás Calliándás (Original Defendant), Appellant, v. Ardasar Frámji Moos (Receiver and Respondent)*, I. L. R., 5 Bom. 45.

NO APPEAL lies from an order passed under s. 505 of the Civil Procedure Code by a Court subordinate to a District Court, submitting the name of a person sought to be appointed a receiver, together with the grounds for the nomination, such being only a preliminary order or expression of opinion, and not an order under s. 503. Nor does an appeal lie from the order of the District Court confirming such nomination, but the District Court ought, when the question is raised, to decide on the necessity for the appointment of a receiver, the words "or pass such other order as it thinks fit" in s. 505 being sufficient to include that question, and not merely to decide the fitness or otherwise of the person nominated to the office of receiver.—*Birajan Kooer v. Ram Churn Lall Mahata*, I. L. R., 7 Cal. 719.

504. Where the property is land paying revenue to Government,
 When Collector may be or land of which the revenue has been assigned
 appointed Receiver. or redeemed, and the Court considers that the
 interests of those concerned will be promoted by the management of
 the Collector, the Court may appoint the Collector to be Receiver of
 such property.

THE above section applies to M. S. C. C.

NO APPEAL lies from an order passed under s. 505 of the Civil Procedure Code by a Court subordinate to a District Court, submitting the name of a person sought to be appointed a receiver, together with the grounds for the nomination, such being only a preliminary order or expression of opinion, and not an order under s. 503. Nor does an appeal lie from the order of the District Court confirming such nomination, but the District Court ought, when the question is raised, to decide on the necessity for the appointment of a receiver, the words "or pass such other order as it thinks fit" in s. 505 being sufficient to include that question, and not merely to decide the fitness or otherwise of the person nominated to the office of receiver.—*Birajan Kooer v. Ram Churn Lall Mahata*, I. L. R., 7 Cal. 719.

505. The powers conferred by this chapter shall be exercised only
 Courts empowered under by High Courts and District Courts: Provided
 this chapter. that, whenever the Judge of a Court subordinate
 to a District Court considers it expedient that a Receiver should be ap-
 pointed in any suit before him, he shall nominate such person as he
 considers fit for such appointment, and submit such person's name,
 with the grounds for the nomination, to the District Court, and the
 District Court shall authorize such Judge to appoint the person so
 nominated, or pass such other order as it thinks fit.

THE above section applies to M. S. C. C.

NO APPEAL lies from an order passed under s. 505 of the Civil Procedure Code by a Court subordinate to a District Court, submitting the name of a person sought to be appointed a receiver, together with the grounds for the nomination, such being only a preliminary order or expression of opinion, and not an order under s. 503. Nor does an appeal lie from the order of the District Court confirming such nomination, but the District Court ought, when the question is raised, to decide on the necessity for the appointment of a receiver, the words "or pass such other order as it thinks fit" in s. 505 being sufficient to include that question, and not merely to decide the fitness or otherwise of the person nominated to the office of receiver.—*Birajan Kooer v. Ram Churn Lall Mahata*, I. L. R., 7 Cal. 719.

PART V. OF SPECIAL PROCEEDINGS.

CHAPTER XXXVII.

REFERENCE TO ARBITRATION.

506. If all the parties to a suit desire that any matter in difference between them in the suit be referred to arbitration, they may, at any time before judgment is pronounced, apply, in person or by their respective pleaders specially authorized in writing in this behalf, to the Court for an order of reference.

Every such application shall be in writing, and shall state the particular matter sought to be referred.

THE above section applies to M. S. C. C. and P. S. C. C.

UNDER this section all parties materially interested must concur in the reference to arbitration.—10 W. R. 171.

A PLAINTIFF must show special authority to assent to an arbitration on behalf of another plaintiff.—1 W. R. 80.

IT is very doubtful whether a Judge has power, under Act X. of 1859, to refer a case to arbitration.—16 W. R. 160.

A REFERENCE to arbitration made under an order of Court cannot be revoked at the instance of a party.—17 W. R. 516.

THE Court cannot legally allow a case, as regards an absent plaintiff, to be decided by reference to arbitration.—1 W. R. 80.

AN Appellate Court is competent to refer cases to arbitration.—17 W. R. 31. But see 19 W. R. 321. Also 21 W. R. 120, *infra*.

No presumption can be raised against a party to a suit from his refusal to withdraw from the determination and submit to arbitration.—20 W. R. 172.

APPLICATION for reference to arbitration must be made to the Court in writing by parties in person or by pleaders specially authorized.—W. R. Sp. 41.

AN Appellate Court has no power to refer a case to arbitration, even on consent of the parties.—(F. B.) 21 W. R. 210.

NOR can the first Court, by consent of parties, refer so much of the matter in dispute which it has already determined, and which is pending in appeal.—22 W. R. 207.

AN Appellate Court, in remanding a case, cannot direct the first Court to call upon the parties to agree to arbitration, or, on their failing to do so, to appoint arbitrators.—22 W. R. 396.

REFERENCE to arbitration cannot be made except on the recorded and expressed consent of both parties.—2 Hay 583 (Marshall 517). The consent of the pleaders is not sufficient.—16 W. R. 160.

BOTH the Code of Procedure and the Punjab Code require the consent of the parties to a reference to, and the appointment of, arbitrators.—(P. C.) 5 W. R., P. C. 21 (P. C. R. 616). See also 14 W. R. 211.

WHEN a case which has been referred in the Principal Sudder Ameen's Court to arbitration is withdrawn by the Judge for trial in his own Court, the Judge is not bound to refer it to arbitration.—6 W. R. 290.

A PARTY, by appearing before arbitrators appointed without his consent, and in spite of his repeated remonstrances, does not forfeit his right to question the validity of the award.—(P. C.) 5 W. R., P. C. 21 (P. C. 616). See also 14 W. R. 211.

A REGULAR (and not a summary) appeal lies to set aside an award of arbitration passed under s. 313 of Act VIII. of 1859 (corresponding with s. 506, Act X. of 1877).—W. R. Sp. Mis., 33. And should be on the full stamp.—12 W. R. 50. See 15 W. R., F. B., 9.

WHERE all the parties did not agree to an arbitration, the award is legal against those who did.—6 W. R. 25. See also 14 W. R. 211. And cannot be converted into a final decree under Act VIII. of 1859, though it is evidence against any party who agreed to the reference.—15 W. R. 427.

WHERE an Appellate Court directed the first Court to call upon the parties to agree to arbitration, and the parties waived the irregularity, and consented to the matter being tried by arbitrators: *Held* that they could not afterwards, on special appeal, object to the proceedings.—22 W. R. 396.

A MERE agreement to refer to arbitration, if it contain no acknowledgment of the plaintiff's right or possession, does not save limitation; but the time during which the case was before the arbitrators, and the plaintiff was trying in another form to enforce the award, may be deducted from the period of limitation.—W. R. Sp. 283 (L. R. 65).

WHERE, after a reference of certain suits to arbitration, the parties withdrew the first submission, and agreed to submit the same suits with other matters to arbitration, and before the arbitrators so appointed had arrived at a final conclusion, the parties by *solehnamah* compromised the whole of the subjects of dispute, and an award was drawn up according to this compromise, a decree corresponding with the award was at first made only in those suits which had been originally referred, and afterwards, on the application of some of the parties, the effect of a decree was given to the remainder of the award: *Held* that this application to give effect to the unenforced portion of the award ought to have been dismissed, but that as the parties concerned did not take steps to set the Lower Court right in this matter (*inter alia*), the High Court could not interfere, and that the effect of the Lower Court's decision was to dispose of the award altogether, and not to divide it into two parts, of which one might form the foundation of a future judgment.—22 W. R. 129.

NOTWITHSTANDING that chap. xxxvii. of Act X. of 1877 (in reference to arbitration) does not refer specially to suits brought under Act X. of 1859, yet if both parties to a suit for a *kabuliyat* brought under the latter Act agree to refer the matters in dispute between them to certain arbitrators named by them, and file a joint petition in the Court of the Deputy Collector, stating that they had so agreed, and praying that the case may be referred to such arbitrators, neither of them will be afterwards at liberty to object to a decree made, embodying the award of the arbitrators, on the ground that the reference to arbitration was irregular, and not warranted by any of the provisions of Act X. of 1877. When a case has been so referred, the arbitrators are at liberty to determine what appears to them to be a fair and equitable rate of rent, and notwithstanding the amount so found is less than that demanded by the plaintiff in his plaint, the Court out of which the reference issued is not at liberty on that ground to dismiss the suit, but is bound to order the defendant (with the alternative of eviction) to execute a *kabuliyat* in favour of the plaintiff at the rate determined by the arbitrators to be fair and equitable.—*Khemna Gowala v. Budoloo Khan*, I. L. R., 6 Cal. 251.

Nomination of arbitrator.

507. The arbitrator shall be nominated by the parties in such manner as may be agreed upon between them.

If the parties cannot agree with respect to such nomination, or if the person whom they nominate refuses to accept the arbitration, and the parties desire that the nomination shall be made by the Court, the Court shall nominate the arbitrator.

THE above section applies to M. S. C. C. and P. S. C. C.

ARBITRATORS cannot delegate their powers to others.—7 W. R. 269, 19 W. R. 47, 22 W. R. 129.

WHERE both parties could not agree in nominating an arbitrator, and the Judge nominated one under this section, it must be inferred that he did so at their desire.—7 W. R. 13.

BEFORE a Judge refers a case to arbitration, he should ascertain whether the parties nominated are willing to act; and till he has done so, any nomination of an arbitrator by him, without the approbation or consent of the parties, is illegal. But when a case has been referred to arbitration, after the preliminary steps have been properly taken, the Judge has the sole power of appointing fresh arbitrators in the room of such as refuse to act.—W. R. Sp. 338 (L. R. 113).

508. The Court shall, by order, refer to the arbitrator the matter in difference which he is required to determine, and shall fix such time as it thinks reasonable for the delivery of the award, and specify such time in the order.

When once a matter is referred to arbitration, the Court shall not deal with it in the same suit, except as hereinafter provided.

THE above section applies to M. S. C. C. and P. S. C. C.

WHERE a reference to arbitration fixes no time for the arbitrators to make the award, the award itself falls to the ground.—10 W. R. 206.

WHERE the reference fixes no time for the award to be made, either party may hasten the proceedings by giving notice to the arbitrators that the award must be made, and an umpire appointed, within a reasonable time; but when the time elapsing after the notice has been actively employed by the arbitrators, and the delay has been owing to necessity which they could not control, the parties cannot recede from their submission by reason of the notice.—(P. C.) 10 W. R., P. C. 51.

509. If the reference be to two or more arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators,

- (a) by the appointment of an umpire, or
- (b) by declaring that the decision shall be with the majority, if the major part of the arbitrators agree, or
- (c) by empowering the arbitrators to appoint an umpire, or
- (d) otherwise, as may be agreed between the parties; or, if they cannot agree, as the Court determines.

If an umpire is appointed, the Court shall fix such time as it thinks reasonable for the delivery of his award in case he is required to act.

THE above section applies to M. S. C. C. and P. S. C. C.

PARTIAL disagreement of two arbitrators does not nullify their award as a whole. 2 W. R. 32.

WHERE parties do not agree to be bound by the act of the majority, the award must be unanimous.—7 W. R. 269, 19 W. R. 47, 22 W. R. 129.

WHAT a party must do who contests the validity of an award on the ground that it was not completed within the time fixed by the Court.—17 W. R. 31. But see 19 W. R. 321.

WHEN a case is referred to the award of three arbitrators, an award signed by two is null and void, and ought not to be read as evidence in the case.—Sev. 479. See also 14 W. R. 211, 22 W. R. 129.

AN order of reference to arbitration should, as required by this section, provide for difference of opinion among the arbitrators and for decision by a majority.—4 W. R. 4. See also 10 W. R. 398, 22 W. R. 129.

THE mere absence of a clause in the order of reference to arbitration, providing for a difference of opinion between the arbitrators, cannot vitiate the award where there is no such difference of opinion.—17 W. R. 30.

A CASE cannot, in special appeal, be sent back to the arbitrators with a provision for difference of opinion, where the arbitrators having given in different awards, the case was tried anew by the first Court, whose decision has been affirmed by the Lower Appellate Court.—14 W. R. 150.

510. If the arbitrator, or, where there are more arbitrators than one, any of the arbitrators, or the umpire, dies, arbitrators or umpire. or refuses, or neglects, or becomes incapable to act, or leaves British India under circumstances showing that he will probably not return at an early date, the Court may, in its discretion, either appoint a new arbitrator or umpire in the place of the person so dying, or refusing, or neglecting, or becoming incapable to act, or leaving British India, or make an order superseding the arbitration, and in such case shall proceed with the suit.

THE above section applies to M. S. C. C. and P. S. C. C.

WHERE an arbitration failed, and the record came back to the Court, the Court was held to have no power to dismiss the suit without giving notice to the parties or fixing a date for the hearing of the suit.—22 W. R. 21.

AN arbitrator has full power to retract his resignation of office before it is accepted.—15 W. R. 37. *Held* by the Privy Council that an arbitrator who first tendered and then withdrew his resignation did not formally divest himself of his character of arbitrator, and was therefore not *functus officio* when he signed the award.—(P. C.) 23 W. R. 429.

511. Where the arbitrators are empowered by the order of reference to appoint an umpire, and fail to do so, Appointment of umpire by Court. any of the parties may serve the arbitrators with a written notice to appoint an umpire; and if, within seven days after such notice has been served, or such further time as the Court may in each case allow, no umpire be appointed, the Court, upon the application of the party who has served such notice as aforesaid, may appoint an umpire.

THE above section applies to M. S. C. C. and P. S. C. C.

The appointment of an umpire under this section is required, where there are two or more arbitrators, to provide for any difference of opinion amongst them; but not where, with the consent of the Court, only one arbitrator has been appointed.—25 W. R. 11.

512. Every arbitrator or umpire appointed under section 509, Powers of arbitrator or umpire appointed under sections 509, 510, 511. section 510, or section 511, shall have the like powers as if his name had been inserted in the order of reference.

THE above section applies to M. S. C. C. and P. S. C. C.

513. The Court shall issue the same processes to the parties and witnesses whom the arbitrators or umpire desire or desires to examine, as the Court may issue in suits tried before it. Summoning witnesses.

Persons not attending in accordance with such process, or making Punishment for default, any other default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the matters referred, shall be &c.

subject to the like disadvantages, penalties, and punishments, by order of the Court, on the representation of the arbitrator or umpire, as they would incur for the like offences in suits tried before the Court.

THE above section applies to M. S. C. C. and P. S. C. C.

514. If, from the want of the necessary evidence or information,

Extension of time for or from any other cause, the arbitrators cannot making award. complete the award within the period specified

in the order, the Court may, if it thinks fit, either grant a further time, and from time to time enlarge the period for the delivery of the award,

Supersession of arbitra- or make an order superseding the arbitration, tion. and in such case shall proceed with the suit.

THE above section applies to M. S. C. C. and P. S. C. C.

UNDER this section the time for delivery of an award may be extended at the discretion of the Court without the consent of the parties.—2 W. R. 297.

APPLICATIONS for the extension of the period for the submission of an award and orders thereon should be made in writing and recorded. When a party has been prejudiced by having the time allowed for taking objections to an award curtailed by the Court, no appeal lies, but a review should be granted by the Court of first instance.—*Monji Preinji Set (Plaintiff), Appellant, v. Maliyakel Koyassan Koya Haji (Defendant), Respondent, I. L. R., 3 Mad. 59.*

When umpire may arbitrate in lieu of arbitrators.

515. When an umpire has been appointed, he may enter on the reference in the place of the arbitrators

(a) if they have allowed the appointed time to expire without making an award, or

(b) when they have delivered to the Court or to the umpire a notice in writing, stating that they cannot agree.

THE above section applies to M. S. C. C. and P. S. C. C.

516. When an award in a suit has been made, the persons who

Award to be signed and made it shall sign it, and cause it to be filed in filed. Court, together with any depositions and documents which have been taken and proved before them; and notice of the

filing shall be given to the parties.

THE above section applies to M. S. C. C. and P. S. C. C.

AN arbitration-award must be one single instrument complete in itself.—12 W. R. 397.

CIVIL Court's judgment cannot affect the rights of parties as declared in an award.—2 W. R. 297.

AN arbitration-award is not binding on an intervenor as a decree in a suit disposed of by a regular suit.—17 W. R. 233.

A CIVIL Court acts illegally in deciding a case on its merits after an arbitration-award.—5 W. R. 130. See also 10 W. R. 398.

AN appeal lies when an arbitration-award is questioned on the ground of there having been no valid submission to arbitration.—19 W. R. 47.

AN arbitration-award is not legal if not signed by the arbitrators sitting together at one place and at the same time.—11 W. R. 433; 12 W. R. 397.

A MUNSIF has no jurisdiction to entertain an application and pass an order on the enforcement of an arbitration-award relating to the determination of rent.—15 W. R. 556.

IN A suit pending before arbitrators, an appellant who is made a co-plaintiff on application, and makes no objection to the arbitration, is bound by the award.—5 W. R. 130.

AN arbitration-award cannot change the nature of the claim, and convert into a simple debt cognizable by a Civil Court a claim for moneys collected by defendant as *tehsildar*.—5 W. R. 13.

COURT cannot reserve permission to a plaintiff to bring a fresh suit for the matter of an arbitration-award, except under s. 97, Act VIII., 1859 (corresponding with ss. 373, 514, Act XIV., 1882).—2 W. R. 297.

ARBITRATORS should give separate awards in a case referred to them by the Judge, and on other matters referred to them by the parties, instead of bringing them all up and giving a general award.—3 W. R., Mis., 27.

AN arbitrator should not allow documents entrusted to him by the Court to be removed from the *nuthee*, but the award should, under this section, be accompanied by all the proceedings, depositions, and exhibits in the suit.—12 W. R. 397.

WHERE an arbitrator imported into his proceedings a previous inquiry alleged to have been made by him, and relied upon admissions made in the former proceedings, his award was held to be bad, and the decision based thereon set aside.—24 W. R. 81.

THE act of an arbitrator, in handing in an award to the proper officer of the Court, for the purpose of the award being filed, cannot be considered as an 'application' within the meaning of the Limitation Act.—*Roberts v. Harrison*, 1 L. R., 7 Cal. 333.

A COURT may look into the whole of an arbitration-record, and set aside the award on reasonable presumption of misconduct (i.e., because it was in opposition to the testimony of witnesses whom the arbitrators accepted and believed).—12 W. R. 93. See 22 W. R. 447.

BOTH parties having agreed to the appointment of arbitrators to determine their rights in dispute according to the terms of a will, and it being contended by the appellant that it was miscarriage on the part of the arbitrators to make their award without having had the whole of the will before them, their lordships came to the conclusion that, as the appellant, having a clear knowledge of the circumstances on which he might found an objection to the arbitrators proceeding to make their award, did submit to the arbitration going on, and allowed the arbitrators to deal with the case as it stood before them, taking his chance of the decision being more or less favorable to himself, it was too late for him, after the award had been made, and on the application to file the award, to insist on this objection to the filing of the award.—(P.C.) 26 W. R. 10.

517. Upon any reference by an order of the Court, the arbitrators

Arbitrators or umpire or umpire may, with the consent of the Court, may state special case. state the award as to the whole or any part thereof in the form of a special case for the opinion of the Court; and the Court shall deliver its opinion thereon; and such opinion shall be added to, and form part of, the award.

THE above section applies to M. S. C. C. and P. S. C. C.

Court may, on application, modify or correct award in certain cases.

518. The Court may, by order, modify or correct an award,

(a) where it appears that a part of the award is upon a matter not referred to arbitration, provided such part can be separated from the other part, and does not affect the decision on the matter referred, or

(b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision.

THE above section applies to M. S. C. C. and P. S. C. C.

519. The Court may also make such order as it thinks fit respecting the costs of arbitration, if any question arise respecting such costs, and the award contain no sufficient provision concerning them.

THE above section applies to M. S. C. C. and P. S. C. C.

520. The Court may remit the award or any matter referred to arbitration to the reconsideration of the same When award or matter referred to arbitration may be remitted, arbitrators or umpire, upon such terms as it thinks fit,

(a) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration ;

(b) where the award is so indefinite as to be incapable of execution ;

(c) where an objection to the legality of the award is apparent upon the face of it.

THE above section applies to M. S. C. C. and P. S. C. C.

THIS section does not authorize a Court to remit a case to the arbitrators except as to matters in difference between the parties.—14 W. R. 469.

A COURT was held to have done right in refusing to permit the filing of an arbitration-award which was not complete in itself, and which, as a whole, the parties had not agreed to.—21 W. R. 182.

AN award of arbitrators on a matter not in difference between the parties, nor referred to them, is null and void for want of jurisdiction, notwithstanding that it has been confirmed by a judgment of Court passed in accordance therewith.—15 W. R. 172.

S. 323, Act VIII., 1859 (corresponding with s. 520, Act XIV., 1882) authorizes a Court to remand a case to arbitrators for reconsideration when there are mistakes which it cannot amend ; and if the arbitrators refuse to reconsider, their award becomes null and void without proof of corruption or misconduct.—7 W. R. 406.

WHERE matters in dispute are referred to arbitration, and it is found that one question at issue is omitted from the reference, and that the award contains no decision thereon, the party interested should bring the omission to the notice of the Court ; if he fails to do so, the Court may pass any order or come to any decision on that point.—14 W. R. 247.

WHERE, in a suit for the filing of an award made on a private reference to arbitration, the Court of first instance, holding that there was no reason to remit such award to the reconsideration of the arbitrator, under the provisions of Act X. of 1877, s. 520, or to set it aside under s. 521, did not proceed to give judgment according to such award followed by a decree, but merely directed that such award should be filed : *Held* that its order was not appealable as a decree or as an order.—*Ramadin v. Mahesh*, I. L. R., 2 All. 471.

AN award was remitted under s. 520 of Act X. of 1877. The arbitrators refused to reconsider it, and the Court thereupon proceeded with the suit, and gave the plaintiffs a decree. The defendants appealed from such decree on the ground, amongst others, that the award had been improperly remitted under s. 520. *Held* that the question whether the award had been properly remitted under s. 520 or not could be entertained in such appeal. The worshippers at a public mosque can maintain a suit to restrain the superintendents of such mosque from using it or its appurtenant rooms for purposes other than those for which they were intended to be used, and from doing acts which are likely to obstruct worshippers in entering or leaving such mosque.—*Abdul Rahman and others (Defendants) v. Yar Muhammad and others (Plaintiffs)*, I. L. R., 3 All. 636.

THE plaintiff in this suit sued the defendants to recover certain moneys presented to him on his marriage, which he alleged the defendants had received and appropriated to their own use. The defendants denied that they had received such moneys, but admitted that such moneys had been credited by the plaintiff's father to the firm in which they, the plaintiff, and the plaintiff's father, were jointly interested, against a larger amount of moneys' belonging to the firm which had been expended on the plaintiff's marriage. The parties agreed to refer the matter in dispute between them to arbitration, and to abide by the decision of the arbitrator. The arbitrator decided that the plaintiff could not recover the moneys he sued for, and which had been credited to the firm of which he was a partner, as a larger sum had been expended on his marriage out of the funds of the firm. The plaintiff obtained the opinions of certain pandits to the effect that, under Hindu law, gifts on marriage are regarded as separate acquisitions, and prayed that the Munsif would remit the award with these opinions to the arbitrator. The Munsif remitted the award with the opinions, requesting the arbitrator to consider them, and to return his opinion in writing within a certain period. The arbitrator having refused to act further, the Munsif proceeded to determine the suit, and gave the plaintiff a decree on the ground that, in a joint Hindu family, presents received on marriage do not fall into the common fund. *Held* (Pearson, J., dissenting) that there being no illegality apparent on the face of the award, the Munsif was not justified in remitting the award or in setting the award aside and proceeding to determine the suit himself, but that he should have passed judgment in accordance with the award.—*Nanak Chand and others (Defendants) v. Ram Narayan (Plaintiff)*.—I. L. R., 2 All. 181.

THE sharers of a joint undivided estate agreed in writing that such estate should be partitioned and the accounts thereof settled by arbitration, and named one of such sharers as arbitrator, and agreed that he should settle all the accounts, show the surplus at each sharer's credit, and prepare lots, after partition of the lands and houses comprehended in such estate, and have them drawn within one year from the completion of the partition. Subsequently one of such sharers applied, under s. 523 of Act X. of 1877, to have such agreement filed in Court. The other sharers not objecting to this course, such agreement was filed accordingly, and the case was referred to such arbitrator. The arbitrator made an award whereby he partitioned such estate into lots, assigning some only of such lots by name, and wherein he stated that he had not been able to settle the accounts owing to the default of the parties, and that, considering that the partition should take effect without any delay, he did not ask for further time. He further stated that "all the parties state that they will adjust the accounts after renewing the agreement," and he requested that the unassigned lots might be drawn in Court. The Court made an order confirming the award, and, it being objected that the settlement of the accounts should not be postponed, but that they should be settled as agreed, directed that the arbitrator should settle the accounts, and gave him a year's time for that purpose, and, some of the parties not being willing to draw the unassigned lots, directed the distribution of such lots "in reference to the age and number" of the sharers. *Held* that such order was a "decree" within the meaning of ss. 2 and 522 of Act X. of 1877 : that the arbitrator should himself have drawn such lots, or he should have made the parties draw them ; but, inasmuch as it would not have strained the agreement to have such lots drawn in Court, and no objection had been taken to the arbitrator not having himself drawn them, it was not incumbent on the Court to have remitted the award in order that the arbitrator might have drawn them : that the Court, however, should not have distributed such lots in the manner it had done, but should have drawn a lot for each person, and in acting as it had done it had acted contrary to the award, and for that reason its decree could not be maintained : and that, in confirming the award before the accounts had been settled and an award made in respect thereof, the Court had acted erroneously, inasmuch as the award had left undetermined a very important matter, *viz.*, the settlement of the accounts, and the Court should, under s. 520 of Act X. of 1877, have remitted the award for the reconsideration of the arbitrator, and, as it had power to remit it upon such terms as it thought fit, the Court could have allowed one year, if necessary, for the settlement of the accounts ; and on this account, and also because the Court had made an order postponing the settlement of the accounts, and thereby made an order contrary to and in excess of the award, its decree must be reversed.—*Sudik Ali Khan (Plaintiff) v. Imdad Ali Khan and others (Defendants)*, I. L. R., 3 All. 286.

521. An award remitted under section 520 becomes void on the grounds for setting aside award. refusal of the arbitrators or umpire to reconsider it. But no award shall be set aside except on one of the following grounds (namely)—

- (a) corruption or misconduct of the arbitrator or umpire;
 - (b) either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire;
 - (c) the award having been made after the issue of an order by the Court superseding the arbitration and restoring the suit;
- and no award shall be valid unless made within the period allowed by the Court.

THE above section applies to M. S. C. C. and P. S. C. C.

THE neglect of some of the arbitrators is misconduct within the meaning of this section—8 W. R. 171. See also 22 W. R. 418.

AN AWARD of arbitration can only be set aside for corruption or partiality, but not on the ground of inconsistency.—W. R. Sp. 153.

AN arbitration-award as to division of property left to minor sons, though assented to by their guardian, was set aside so far as regarded those sons on proof that the partition was injurious to them.—1 W. R. 280.

IF an arbitration-award is set aside, and the matter is tried as a suit, the arbitrator cannot be examined as a witness as to the grounds of his decision, but only to prove any admission which may have been made before him.—17 W. R. 516.

NOTHING which passes between the parties to a suit in any attempt at arbitration or compromise should be allowed to effect the slightest prejudice to the merits of their case as it eventually comes to be tried before the Court.—20 W. R. 172.

THE refusal of arbitrators to amend a clearly bad award is misconduct on their part, within the meaning of this section, justifying its being set aside.—3 W. R. 168. See also 11 W. R. 140; 15 W. R., F. B., 9; (P. C.) 23 W. R. 429, 24 W. R. 188.

AN AWARD of arbitration will not be invalidated by reason of one of the persons interested having become a lunatic after the proceedings before the arbitrator were substantially concluded and before the final publication of the award.—7 W. R. 5.

AN award is not reversible except under this section. An arbitrator is not bound by technical rules of Court. He is appointed to give an equitable award, and can decide a case upon a document whether stamped or unstamped.—1 W. R. 12,

A JUDGMENT passed within the time allowed by s. 324, Act VIII, 1859 (corresponding will s. 521, Act XIV. 1882), *viz.*, 10 days after the submission of the award to the Court, is not a final judgment under s. 325 (corresponding with s. 522).—12 W. R. 93. See also 20 W. R. 311.

AN ORDER of a Civil Court setting aside an arbitration-award, being an interlocutory order, is not open to an appeal immediately; but when the Court sets aside the award on the ground of misconduct on the part of the arbitrator, and after hearing the case on its merits, makes its decree in favour of the plaintiff, it is competent to the defendant to appeal against that decree—14 W. R. 327. See also 22 W. R. 420.

AN award was remitted under s. 520 of Act X. of 1877. The arbitrators refused to reconsider it, and the Court thereupon proceeded with the suit, and gave the plaintiffs a decree. The defendants appealed from such decree on the ground, amongst others, that the award had been improperly remitted under s. 520. *Held* that the question whether the award had been properly remitted under s. 520 or not could be entertained in such appeal. The worshippers at a public mosque can maintain a suit to restrain the superintendents of such mosque from using it or its appurtenant rooms for purposes other than those for which they were intended to be used, and from doing acts which are likely to obstruct worshippers in entering or leaving such mosque.—Abdul Rahman and others (Defendants) v. Yar Muhammad and others (Plaintiffs), I. L. R., 3 All. 636.

A CASE was referred by consent to arbitration, and after having been recalled into Court was again referred. An award was made by the arbitrator and filed in Court. The defendants then objected, on the ground that they had no notice after the second reference, and that they were not heard, and that the arbitrator had otherwise misconducted himself. These objections were disallowed by the Subordinate Judge, who gave a decree in the terms of the award. This decree was upheld by the Judge on appeal, who, however, found that the arbitrator had been guilty of misconduct. *Held* that, if the decree of the first Court was not final under s. 325, Act VIII. of 1859, all that the lower Appellate Court could do, was to remand the case to be dealt with on its merits; but inasmuch as there had been an award and a decree thereon, which was final within the terms of that section, the lower Appellate Court had no jurisdiction to hear the appeal, or to express any opinion on what had passed in the first Court.—*Wazir Mahton and another (Defendants) v. Lulit Singh and another (Plaintiffs)*, I. L. R., 7 Cal. 166.

522. If the Court sees no cause to remit the award or any of the Judgment to be accorded matters referred to arbitration for reconsideration in manner aforesaid, and if no application has been made to set aside the award, or if the Court has refused such application,

the Court shall, after the time for making such application has expired, proceed to give judgment, according to the award,

or, if the award has been submitted to it in the form of a special case, according to its own opinion on such case.

Upon the judgment so given a decree shall follow, and shall be enforced in manner provided in this Code for the execution of decrees. No appeal shall lie from such decree except in so far as the decree is in excess of, or not in accordance with, the award.

Decree to follow.

THE above section applies to M. S. C. C.; also to P. S. C. C. (except the provisions as to appeals.)

A PLAINTIFF'S allegation in a former suit having been overruled in arbitration, he is not estopped from bringing a fresh suit on the finding of the arbitrators.—6 W. R. 68.

As long as the order of a Munsif quashing an arbitration-award subsists in full form, the award cannot be said to exist as a binding award between the parties.—21 W. R. 261.

IN appealing to set aside an award as not binding upon the appellant, he is not bound to appeal against every interlocutory order.—(P. C.) 5 W. R., P. C. 21 (P. C. R. 616).

A DECREE was held to be in accordance with the award, and therefore final under this section, although it did not embody a suggestion of two out of the three arbitrators, which suggestion the first Court dealt with as mere surplusage.—20 W. R. 226.

A JUDGMENT of a Court, given in accordance with an award of arbitration, is final under s. 325, Act VIII., 1859 (corresponding with ss. 522, 588, Act XIV., 1882), even if there has been corruption and misconduct on the part of the arbitrators.—7 W. R. 205; 8 W. R. 171.

A JUDGMENT given on an arbitration is final under this section when it is according to the award, but not otherwise; an appeal will lie on the ground that it is contrary to the award.—3 W. R. 168. See also 11 W. R. 140; 15 W. R., F. B., 9; (P. C.) 23 W. R. 429, 24 W. R. 188.

ALTHOUGH no appeal will lie under this section against a judgment passed according to the award as prescribed in s. 327 (corresponding with s. 525), an appeal will lie, under s. 11, Act XXIII. of 1861, against an order made in execution-proceedings taken upon that judgment.—13 W. R. 62.

THE addition, in a judgment according to an award, of a trifling direction upon a matter not referred to the arbitrators, which was quite separable from the other parts of the award, and did not affect the decision on the matter referred, was held not to affect the finality of the judgment.—17 W. R. 352.

WHERE the order of the Court which made the reference to arbitration, declining to pass judgment according to the award, is reversed in appeal, the lower Appellate Court's order is open to special appeal, the above section applying only to the Court by which a case is referred to arbitration.—12 W. R. 93. See 22 W. R. 447.

WHERE a suit has been referred to arbitration by an order of Court, and the Court afterwards gives judgment according to the award made upon such reference, such judgment is final, and no appeal lies therefrom.—1 Hay 366 (Marshall 163), 14 W. R. 33, 17 W. R. 30., (P.C.) 23 W. R. 429. See 15 W. R., F. B., 9.

THE term "judicial proceeding," as used in Act X. of 1877, s. 2, must be understood to mean a judicial proceeding of the same nature as a suit or such proceedings as are referred to in ss. 333, 522, 526, and 531. The definition given in Act X. of 1872 is not applicable.—*Dalpatbhái Bhágubháí v. Amarsang Khemá Bhái*, I. L. R., 2 Bom. 553.

S. 325, Act VIII., 1859 (corresponding with ss. 522, 588, Act XIV., 1882), is not applicable to private awards, and ought to be enforced under s. 327 (corresponding with ss. 525, 526, Act XIV., 1882); and an appeal will lie from the order of a Court directing its enforcement.—3 W. R. 154. See 14 W. R. 255; 15 W. R., F. B., 9; 21 W. R., 182.

SUBMISSION to arbitration is revocable before award made.—7 W. R. 269. Not arbitrarily, but for good cause; the fact of one of the parties to the agreement revoking his submission is not a sufficient cause within the meaning of s. 326, Act VIII., 1859 (corresponding with ss. 523, 524, Act XIV., 1882).—(P. C.) 10 W. R., P. C. 51; 15 W. R. 331; 21 W. R. 395; 22 W. R. 522.

THE sharers of a joint undivided estate agreed in writing that such estate should be partitioned and the accounts thereof settled by arbitration, and named one of such sharers as arbitrator, and agreed that he should settle all the accounts, show the surplus at each sharer's credit, and prepare lots, after partition of the lands and houses comprehended in such estate, and have them drawn within one year from the completion of the partition. Subsequently one of such sharers applied, under s. 523 of Act X. of 1877, to have such agreement filed in Court. The other sharers not objecting to this course, such agreement was filed accordingly, and the case was referred to such arbitrator. The arbitrator made an award whereby he partitioned such estate into lots, assigning some only of such lots by name, and wherein he stated that he had not been able to settle the accounts owing to the default of the parties, and that, considering that the partition should take effect without any delay, he did not ask for further time. He further stated that "all the parties state that they will adjust the accounts after renewing the agreement," and he requested that the unassigned lots might be drawn in Court. The Court made an order confirming the award, and, it being objected that the settlement of the accounts should not be postponed, but that they should be settled as agreed, directed that the arbitrator should settle the accounts, and gave him a year's time for that purpose, and, some of the parties not being willing to draw the unassigned lots, directed the distribution of such lots "in reference to the age and number" of the sharers. Held that such order was a "decree" within the meaning of ss. 2 and 522 of Act X. of 1877: that the arbitrator should himself have drawn such lots, or he should have made the parties draw them; but, inasmuch as it would not have strained the agreement to have such lots drawn in Court, and no objection had been taken to the arbitrator not having himself drawn them, it was not incumbent on the Court to have remitted the award in order that the arbitrator might have drawn them: that the Court, however, should not have distributed such lots in the manner it had done, but should have drawn a lot for each person, and in acting as it had done it had acted contrary to the award, and for that reason its decree could not be maintained: and that, in confirming the award before the accounts had been settled and an award made in respect thereof, the Court had acted erroneously, inasmuch as the award had left undetermined a very important matter, *viz.*, the settlement of the accounts, and the Court should, under s. 520 of Act X. of 1877, have remitted the award for the reconsidera-

tion of the arbitrator, and, as it had power to remit it upon such terms as it thought fit, the Court could have allowed one year, if necessary, for the settlement of the accounts ; and on this account, and also because the Court had made an order postponing the settlement of the accounts, and thereby made an order contrary to and in excess of the award, its decree must be reversed.—*Sadik Ali Khan (Plaintiff) v. Imdad Ali Khan and others (Defendants)*, I. L. R., 3 All. 286.

523. When any persons agree in writing that any difference be-

Agreement to refer to arbitration may be filed in Court. tween them shall be referred to the arbitration of any person named in the agreement or to be appointed by any Court having jurisdiction in the matter to which the agreement relates, the parties thereto, or any of them, may apply that the agreement be filed in Court.

The application shall be in writing, and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs, and the others or other of them as defendants or defendant, if the application have been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants.

On such application being made, the Court shall direct notice thereof to be given to all the parties to the agreement other than the applicants, requiring such parties to show cause, within the time specified in the notice, why the agreement should not be filed.

If no sufficient cause be shown, the Court may cause the agreement to be filed, and shall make an order of reference thereon, and may also nominate the arbitrator, when he is not named therein, and the parties cannot agree as to the nomination.

THE above section applies to M. S. C. C. and P. S. C. C.

UNDER Act X. of 1877, ss. 523 and 525, parties to a suit, as well as persons not engaged in litigation, may agree to refer matters in dispute between them to private arbitration without the intervention of the Court, and may apply to have the agreement filed ; and the mere fact that the suit is pending with respect to the matters in dispute is not of itself a sufficient reason to induce the Court to refuse to file the agreement.—*Harivalabdás Kallindás v. Utamchand Máneckchand*, I. L. R., 4 Bom. 1. See also I. L. R., 6 Cal. 251.

524. The foregoing provisions of this chapter, so far as they are

Provisions of chapter applicable to proceedings under order of reference. consistent with any agreement so filed, shall be applicable to all proceedings under an order of reference made by the Court under section 523 and to the award of arbitration and to the enforcement of the decree founded thereupon.

THE above section applies to M. S. C. C. and P. S. C. C.

WHERE the partner of a firm in their partnership-deed agreed to refer their disputes to arbitration, and the reference made in pursuance of this agreement gave the arbitrators a power to make partition, but omitted a power to sell. *Held*, on the award being made a rule of Court, that the Court had no power, under s. 326, Act VIII. of 1859, to order the sale of certain property of which the arbitrators were unable to make partition, and the sale of which they recommended on that ground.—*Chunnimony Dossee and another (Plaintiffs) v. Nistarinee Dossee (Defendant)*, I. L. R., 3 Cal. 357.

THE sharers of a joint undivided estate agreed in writing that such estate should be partitioned and the accounts thereof settled by arbitration, and named one of such sharers as arbitrator, and agreed that he should settle all the accounts, show the surplus at each sharer's credit, and prepare lots, after partition of the lands and houses comprehended in such estate, and have them drawn within one year from the completion of the partition. Subsequently one of such sharers applied, under s. 523 of Act X. of 1877, to have such agreement filed in Court. The other sharers not objecting to this course, such agreement was filed accordingly, and the case was referred to such arbitrator. The arbitrator made an award whereby he partitioned such estate into lots, assigning some only of such lots by name, and wherein he stated that he had not been able to settle the accounts owing to the default of the parties, and that, considering that the partition should take effect without any delay, he did not ask for further time. He further stated that "all the parties state that they will adjust the accounts after renewing the agreement," and he requested that the unassigned lots might be drawn in Court. The Court made an order confirming the award, and, it being objected that the settlement of the accounts should not be postponed, but that they should be settled as agreed, directed that the arbitrator should settle the accounts, and gave him a year's time for that purpose, and, some of the parties not being willing to draw the unassigned lots, directed the distribution of such lots "in reference to the age and number" of the sharers. *Held* that such order was a "decree" within the meaning of ss. 2 and 522 of Act X. of 1877 : that the arbitrator should himself have drawn such lots, or he should have made the parties draw them ; but, inasmuch as it would not have strained the agreement to have such lots drawn in Court, and no objection had been taken to the arbitrator not having himself drawn them, it was not incumbent on the Court to have remitted the award in order that the arbitrator might have drawn them : that the Court, however, should not have distributed such lots in the manner it had done, but should have drawn a lot for each person, and in acting as it had done it had acted contrary to the award, and for that reason its decree could not be maintained : and that, in confirming the award before the accounts had been settled and an award made in respect thereof, the Court had acted erroneously, inasmuch as the award had left undetermined a very important matter, *viz.*, the settlement of the accounts, and the Court should, under s. 520 of Act X. of 1877, have remitted the award for the reconsideration of the arbitrator, and, as it had power to remit it upon such terms as it thought fit, the Court could have allowed one year, if necessary, for the settlement of the accounts ; and on this account, and also because the Court had made an order postponing the settlement of the accounts, and thereby made an order contrary to and in excess of the award, its decree must be reversed.—*Sadik Ali Khan (Plaintiff) v. Imdad Ali Khan and others (Defendants)*, I. L. R., 3 All 286.

525. When any matter has been referred to arbitration without

Filing award in matter referred to arbitration without intervention of Court.

the intervention of a Court of Justice, and an award has been made thereon, any person interested in the award may apply to the Court of the lowest grade having jurisdiction over the matter to which the award relates, that the award be filed in Court.

The application shall be in writing, and shall be numbered and

Application to be numbered and registered.

registered as a suit between the applicant as plaintiff and the other parties as defendants.

The Court shall direct notice to be given to the parties to the

Notice to parties to arbitration.

arbitration, other than the applicant, requiring them to show cause, within a time specified,

why the award should not be filed.

THE above section applies to M. S. C. C. and P. S. C. C.

AN application to enforce an arbitration-award under this section may be made without any valuation of the suit.—14 W. R. 255.

THERE is no appeal from an order refusing to file an award under this section.—*Vaithialinga Pillai v. Rathvam Pillai*, 4 Ind. Jur. 392.

THE benefit of this section will be lost if the application for enforcement of an award of private arbitration be not made within 6 months.—5 W. R. 123.

POSSESSION under a private award of arbitration would suffice to make the award valid, under cl. 3, s. 3, Reg. VI. of 1813, without the intervention of the Courts.—6 W. R. 94.

EXCEPT in the cases mentioned in the Act, there is no appeal from a decree which is passed in terms of an award.—*Manji Premji Shet v. Maliyakal Koyapen Korja Kaji*, 4 Ind. Jur. 396.

AWARD should be filed in Court. Effect of not filing as laid down in s. 327, Act VIII., 1859 (corresponding with ss. 525, 526 Act XIV., 1882)—1 W. R. 163. See also 25 W. R. 152.

THERE is nothing in Act VIII. of 1859 to prevent parties, who have a suit pending in Court, to submit the subject-matter of that suit and other matters in dispute to arbitration under this section.—W. R. Sp., Mis., 21.

A PRIVATE award may be valid and binding, though no proceedings under s. 327, Act VIII., 1859 (corresponding with ss. 525, 526, Act XIV., 1882) have been taken to enforce it.—7 W. R. 269. See also 9 W. R. 441, 20 W. R. 420.

WHEN a private award between parties is filed in a Court under this section, the prescribed course is for the Court to give judgment and pass a decree, and not to order execution before such decree has been passed.—21 W. R. 295.

A SMALL Cause Court has jurisdiction, under this section, to entertain an application to file a private arbitration-award relating to a debt not exceeding the amount cognizable by such Court if the defendant resides within its jurisdiction.—10 W. R. 85. See 13 W. R. 233.

ON AN application under this section to have an award filed in Court, it was held that the word "award" as used in the plaint must be taken to include the whole document which is scheduled to the plaint, *i.e.*, the formal judgment as well as the decree.—(P. C.) 26 W. R. 10.

A SUBMISSION to private arbitration need not be put in writing to be valid, and a private award made in pursuance thereof will be respected by the Courts if duly performed. Both submission and award may be proved without *ikrarnamah*.—W. R. Sp. 76. See also 18 W. R. 533.

AN appeal, on the allegation of want of consent of parties, lies from the order of a lower Court under s. 327, Act VIII., 1859 (corresponding with s. 525, Act XIV., 1882), directing a private award of arbitration to be filed and enforced.—6 W. R. 60. See also 15 W. R., F. B., 9; 24 W. R. 188.

AN ORDER rejecting an application to file an award under this section is not a decree, and is therefore not appealable.—(F. B.) 6 W. R., Mis., 83; 7 W. R. 401; 11 W. R. 57; 12 W. R. 85. But see 14 W. R. 255; 15 W. R., F. B., 9; 21 W. R. 182. Even though the order awards costs.—11 W. R. 104.

The above section incorporates the provision in s. 522 as to the finality of the judgment given according to the award, and puts the award filed under s. 525 in the same position as the award filed under s. 522. Where a Court files an arbitration-award, and passes a decree, that decree is final.—21 W. R. 248.

IT was decided by the full bench in *Lala Ishuri Pershad v. Her Bhanjan Tewaree*, (15 W. R. 9 F.), that the question of the existence of a legal award is one which is open to appeal, but that when the existence of the award has been finally determined, and judgment is given in accordance with the award, then there is no appeal.—*Bahur Meah (Defendant) v. Junjun Meah (Plaintiff)*, I. L. R., 2 Cal 362.

MATTERS in dispute were referred to arbitration without the intervention of the Court. An award was made, and upon an application under s. 525 of the Civil Procedure Code to file the award, one of the parties showed cause why the award should not be filed, and the Subordinate Judge held the objection to be good. Held that no appeal lay.—*Sree Ram Chowdhry v. Denobundhoo Chowdhry*, I. L. R., 7 Cal. 490.

A SUBORDINATE Judge, although invested with the jurisdiction of a Small Cause Court Judge, does not, on that account, become a Small Cause Court Judge, nor his Court such a Court within the meaning of Act X. of 1877. He, therefore, has

power, within the limits of his ordinary pecuniary jurisdiction, to receive and file awards of arbitrators under s. 525 of that Act.—*Balkrishna v. Lakshman*, I. L. R., 3 Bom. 219.

BY THE amendment of the plaint, a case under s. 525 of Act X. of 1877 was taken out of the scope of ch. xxxvii. of that Act. *Held* that, this being so, the decree of the Court of first instance was appealable. *Held* also, where a private award determined a matter not referred to arbitration, that a claim under s. 525 of Act X. of 1877, that such award should be filed in Court, was properly dismissed.—*Juala Singh and another (Plaintiffs) v. Narain Das (Defendant)*, I. L. R., 3 All. 541.

UNDER Act X. of 1877, ss. 523 and 525, parties to a suit, as well as persons not engaged in litigation, may agree to refer matters in dispute between them to private arbitration without the intervention of the Court, and may apply to have the agreement filed; and the mere fact that the suit is pending with respect to the matters in dispute is not of itself a sufficient reason to induce the Court to refuse to file the agreement.—*Harivalabdas Kallianadas v. Utamchand Maneckchand*, I. L. R., 4 Bom. 1. See also I. L. R., 6 Cal. 251

WHERE an arbitration-bond provides that the matters in dispute referred to the arbitrators may be taken up and dealt with *seriatim*, and the award delivered bit by bit (*khurd khurd*), it is not necessary under s. 327 of Act VIII. of 1859 (corresponding with ss. 525, 526, Act XIV., 1882) that all the matters referred to should have been decided before the first portion of the award dealing with some only of the subjects in dispute can be filed.—*Srimoti Shoshemukhi Dabia (Appellant) and Nobin Chunder Roy and others (Respondents)*, I. L. R., 4 Cal. 92.

WHEN a Court has refused to file an award upon an application under s. 525, Civil Procedure Code, no appeal lies against such decision, which is an order, and not a decree; but the High Court can interfere under s. 622. An award made under s. 525, which is partly within and partly exceeds the terms of the submission to arbitration, cannot be enforced by summary procedure under s. 526 as to such portion as does not exceed those terms. To refer to arbitration questions arising on the construction of the award and questions left undecided by it is a matter beyond the scope of an agreement to submit to a scheme for the future management of a *dévassam* as regards conduct of suits, granting of demises, custody of property, collection of rents, appointment and removal of servants, and defrayment of current expenditure.—*R. Ry. Mána Vikrama, Zámorin, Mahárája Bahadur of Calicut (Plaintiff), Petitioner, v. Mallichery Kristnan Nambudri (Defendant), Counter-Petitioner*, I. L. R., 3 Mad. 68.

526. If no ground, such as is mentioned or referred to in section

Filing and enforcement of such award. 520 or section 521, be shown against the award, the Court shall order it to be filed, and such award shall then take effect as an award made under the provisions of this chapter.

THE above section applies to M. S. C. C. and P. S. C. C.

WHEN sufficient cause is shown against a private award, the Court may refuse to enforce it under this section.—21 W. R. 377.

UNDER the law previous to Act VIII. of 1859, the summary refusal to enforce an arbitration-award did not bar the use of the award as the basis of a regular suit.—W. R. Sp. 283 (L. R. 65).

THE term "judicial proceeding," as used in Act X. of 1877, s. 2. must be understood to mean a judicial proceeding of the same nature as a suit or such proceedings as are referred to in ss. 333, 522, 526, and 531. The definition given in Act X. of 1872 is not applicable.—*Dalpatbhái Bhághubháí v. Amarsang Khemá Bhái*, I. L. R., 2 Bom. 553.

A PLAINTIFF cannot sue for moveables by a suit to enforce an award. He may sue for damages and losses sustained with regard to his share of ancestral property, under his general rights of inheritance, whether adjudicated upon by a previous award of arbitration or not; and as regards lands, he may sue either for enforcement of the award or upon his general rights.—5 W. R. 165.

WHEN a Court has refused to file an award upon an application under s. 525, Civil Procedure Code, no appeal lies against such decision, which is an order, and not a decree; but the High Court can interfere under s. 622. An award made under s. 525, which is partly within and partly exceeds the terms of the submission to arbitration, cannot be enforced by summary procedure under s. 526 as to such portion as does not exceed those terms. To refer to arbitration questions arising on the construction of the award and questions left undecided by it is a matter beyond the scope of an agreement to submit to a scheme for the future management of a *dévassam* as regards conduct of suits, granting of demises, custody of property, collection of rents, appointment and removal of servants, and defrayment of current expenditure.—*R. Ry. Māna Vikrama, Zāmorin, Mahārāja Bahadur of Calicut (Plaintiff), Petitioner, v. Mallichery Kristnan Nambudri (Defendant), Counter-Petitioner, I. L. R., 3 Mad. 68.*

CHAPTER XXXVIII.

OF PROCEEDINGS ON AGREEMENT OF PARTIES.

527. Parties claiming to be interested in the decision of any question

Power to state case for Court's opinion. of fact or law may enter into an agreement in writing, stating such question in the form of a case for the opinion of the Court, and providing that, upon the finding of the Court with respect to such question,

(a) a sum of money fixed by the parties, or to be determined by the Court, shall be paid by one of the parties to the other of them; or

(b) some property, moveable or immoveable, specified in the agreement, shall be delivered by one of the parties to the other of them; or

(c) one or more of the parties shall do, or refrain from doing, some other particular act specified in the agreement.

Every case stated under this section shall be divided into consecutively numbered paragraphs, and shall concisely state such facts and documents as may be necessary to enable the Court to decide the question raised thereby.

THE above section applies to M. S. C. C.; also to P. S. C. C. (except so much of cl. b as relates to immoveable property).

528. If the agreement is for the delivery of any property, or for

When value of subject-matter must be stated. the doing, or the refraining from doing, any particular act, the estimated value of the property to be delivered, or to which the act specified has reference, shall be stated in the agreement.

THE above section applies to M. S. C. C. and P. S. C. C.

529. The agreement, if framed in accordance with the rules herein-

Agreement to be filed and numbered as suit. before contained, may be filed in the Court which would have jurisdiction to entertain a suit, the amount or value of the subject-matter of which is the same as the amount or value of the subject-matter of the agreement.

The agreement, when so filed, shall be numbered and registered as a suit between one or more of the parties claiming to be interested as plaintiff or plaintiffs, and the other or others of them as defendant or defendants; and notice shall be given to all the parties to the agreement, other than the party or parties by whom it was presented.

THE above section applies to M. S. C. C. and P. S. C. C.

530. When the agreement has been filed, the parties to it shall be subject to the jurisdiction of the Court, and shall be bound by the statements contained therein.

THE above section applies to M. S. C. C. and P. S. C. C.

531. The case shall be set down for hearing as a suit instituted under Chapter V., the provisions of which shall apply to such suit so far as the same are applicable.

If the Court is satisfied, after an examination of the parties, or after taking such evidence as it thinks fit,

(a) that the agreement was duly executed by them, and

(b) that they have a *bonâ fide* interest in the question stated therein, and

(c) that the same is fit to be decided,

it shall proceed to pronounce judgment thereon, in the same way as in an ordinary suit, and upon the judgment so given a decree shall follow, and shall be enforced in the manner provided in this Code for the execution of decrees.

THE above section applies to M. S. C. C. and P. S. C. C.

THE term "judicial proceeding," as used in Act X. of 1877, s. 2, must be understood to mean a judicial proceeding of the same nature as a suit or such proceedings as are referred to in ss. 333, 522, 526, and 531. The definition given in Act X. of 1872 is not applicable.—*Dalpatbhái Bhágubhái v. Amarsang Khemá Bhái*, I. L. R., 2 Bom. 553.

CHAPTER XXXIX.

OF SUMMARY PROCEDURE ON NEGOTIABLE INSTRUMENTS.

532. In any Court to which this section applies, all suits upon bills of exchange, hundís, or promissory notes, may, in case the plaintiff desires to proceed under this chapter, be instituted by presenting a complaint in the form prescribed by this Code; but the summons shall be in the form contained in the fourth schedule hereto annexed, No. 172, or in such other form as the High Court may from time to time prescribe.

In any case in which the plaintiff and summons are in such forms respectively, the defendant shall not appear or defend the suit, unless he obtains leave from a Judge, as hereinafter mentioned, so to appear and defend;

and in default of his obtaining such leave or of appearance and defence in pursuance thereof, the plaintiff shall be entitled to a decree for any sum not exceeding the sum mentioned in the summons, together with interest at the rate specified (if any) to the date of the decree, and a sum for costs to be fixed by a rule of the High Court, unless the plaintiff claims more than such fixed sum, in which case the costs shall be ascertained in the ordinary way, and such decree may be enforced forthwith.

The defendant shall not be required to pay into Court the sum mentioned in the summons, or to give security therefor, unless the Court thinks his defence not to be *prima facie* sustainable, or feels reasonable doubt as to its good faith.

Explanation.—This section is not confined to cases in which the bill, hundi, or note sued upon, together with mere lapse of time, is sufficient to establish a *prima facie* right to recover.

533. The Court shall, upon application by the defendant, give leave to appear and to defend the suit, upon the defendant paying into Court the sum mentioned in the summons, or upon affidavits satisfactory to the Court, which disclose a defence or such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Court may deem sufficient to support the application, and on such terms as to security, framing and recording issues, or otherwise, as the Court thinks fit.

534. After decree, the Court may, under special circumstances, set aside the decree, and, if necessary, stay or set aside execution, and may give leave to appear to the summons and to defend the suit, if it seem reasonable to the Court so to do, and on such terms as the Court thinks fit.

No APPEAL lies under Act X. of 1877 from an order made under that Act rejecting an application for an order setting aside a decree made *ex-parte* against a defendant.—I. L. R., 1 All. 748 (F. B.).

535. In any proceeding under this chapter the Court may order the bill, hundi, or note on which the suit is founded, to be forthwith deposited with an officer of the Court, and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof.

536. The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise, by reason of such dishonour, as he has under this chapter for the recovery of the amount of such bill or note.

537. Except as provided by sections 532 to 536 (both inclusive), the procedure in suits under this chapter shall be the same as the procedure in suits instituted under Chapter V.

538. Sections 532 to 537 (both inclusive) apply only to—

- (a) the High Courts of Judicature at Fort William, Madras, and Bombay;
- (b) the Court of the Recorder of Rangoon;
- (c) the Courts of Small Causes in Calcutta, Madras, and Bombay;
- (d) the Court of the Judge of Karáchi; and

(e) any other Court having ordinary original civil jurisdiction to which the Local Government may, by notification in the official Gazette, apply them.

In case of such application the Local Government may direct by whom any of the powers and duties incident to the provisions so applied shall be exercised and performed, and make any rules which it thinks requisite for carrying into operation the provisions so applied.

Within one month after such notification has been published, such provisions shall apply accordingly, and the rules so made shall have the force of law.

The Local Government may, from time to time, alter or cancel any such notification.

CHAPTER XL.

OF SUITS RELATING TO PUBLIC CHARITIES.

539. In case of any alleged breach of any express or constructive

When suits relating to public charities may be brought, trust created for public charitable or religious purposes, or whenever the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General acting *ex officio*, or two or more persons having ~~a direct~~ interest in the trust, and having obtained the consent in writing of the Advocate-General, may institute a suit in the High Court or the District Court within the local limits of whose civil jurisdiction the whole or any part of the subject-matter of the trust is situate, to obtain a decree—

- (a) appointing new trustees under the trust;
 - (b) vesting any property in the trustees under the trust;
 - (c) declaring the proportions in which its objects are entitled;
 - (d) authorizing the whole or any part of its property to be let sold, mortgaged, or exchanged;
 - (e) settling a scheme for its management;
- or granting such further or other relief as the nature of the case may require.

The powers conferred by this section on the Advocate-General may, outside the Presidency-towns, be, with the previous sanction of the Local Government, exercised also by the Collector or by such officer as the Local Government may appoint in this behalf.

Act No. X. of 1840, section two, is hereby repealed.

WORSHIPPERS or devotees of an idol are entitled to bring a suit, complaining of a breach of trust, with reference to the funds or property belonging to the idol or appendant to its temple: *Quere* whether, if the suit had been brought after Act X of 1877 came into force, s. 539 of that Act could be held applicable to the *devasthā* of an idol or temple, dedicated merely to the purposes of such idol or temple.—*Rádhabái Kom Chimnaji Sali v. Chimnaji bin Ramji Sali*, I. L. R., 3 Bom. 27.

In a suit by two of the worshippers at a certain mosque, instituted after having obtained the sanction of the Advocate-General under s. 539 of the Civil Procedure Code, against the mutawalli of the mosque, and two other persons to whom the mutawalli had mortgaged part of the endowed property to secure the repayment of a loan, it appeared that one of the mortgagees had sold some of the *vagf* property in execution of a decree which he had obtained upon his mortgage, and the property had been purchased by the other mortgagee. The plaintiffs prayed that the

property purchased might be declared to be *wagf*; that the sale in execution might be declared to be invalid; that a mutawalli might be appointed by the Court; and that the costs of doing the acts of the *wagf* might be defrayed from the profits of the property belonging to the endowment. *Held* that, so far as regarded that portion of the prayer as fell within the provisions of s. 539 of the Code, the plaintiffs were not entitled to sue, as they were not "persons having a direct interest in the trust" within the meaning of the section, and that the suit should have been instituted under s. 14 of Act XX. of 1863 after sanction obtained under s. 18. *Held* also that though the plaintiffs might possibly have obtained leave to sue under s. 30 of the Code on behalf of themselves and the other persons attending the mosque, they not having obtained such leave were not entitled to institute the suit for the purpose of obtaining the relief asked for in the other prayers of the plaint. The words "trustee, manager, or superintendent of a mosque," &c., mentioned in Act XX. of 1863, mean the trustee, manager, or superintendent of a mosque, &c., to which the provisions of the Act are applicable, not the trustee, &c., of any mosque. And such persons are those to whom the provisions of Reg. XIX. of 1810 were applicable. The mosques, &c., to which the provisions of that Regulation were applicable, were mosques for the support of which endowments had been granted in land by the Government of the country or by individuals, and the mosques, &c., to which the provisions of Act XX. of 1863 apply are, not any mosques, &c., but any mosques for the support of which endowments in land have been made by the Government or private individuals.—*Jan Ali and another (Plaintiffs) v. Ram Nath Mundul and others (Defendants)*, I. L. R., 8 Cal. 32.

PART VI. OF APPEALS.

CHAPTER XLI.

OF APPEALS FROM ORIGINAL DECREES.

540. Unless when otherwise expressly provided by this Code or by

any other law for the time being in force, an
 Appeal to lie from all original decrees, except when expressly prohibited.
 appeal shall lie from the decrees, or from any part of the decrees, of the Courts exercising original jurisdiction to the Courts authorized to hear appeals from the decisions of those Courts.

An order under s. 556 of Act X. of 1877, dismissing an appeal for the appellant's default, is not a "decree" within the meaning of s. 2, and is not appealable.—*Mukhi (Judgment-debtor) v. Fakir (Decree-holder)*, I. L. R., 3 All. 382.

An order made under s. 37, Bengal Rent Act (Beng. Act VIII. of 1869), is a decree within the meaning of the definition contained in the Civil Procedure Code (Act X. of 1877), and an appeal lies therefrom under the provisions of s. 540.—*Brojendro Coomar Roy v. Krishna Coomar Ghose*, I. L. R., 7 Cal. 684.

UNDER s. 540 of the Civil Procedure Code an appeal lies from decrees passed *ex parte*. If a defendant appears at the first hearing, and files a written statement, he should not be placed *ex parte*.—*Anantharama Pattatier* (Second Defendant), Appellant, *v. Madhava Paniker* (Plaintiff's Representative), Respondent, I. L. R., 3 Mad. 264.

An appellant, who has obtained a decree setting aside the decision of the Court of first instance, is not entitled to a further appeal to the High Court, on the ground that he is dissatisfied with some of the findings recorded in the judgment of the lower Appellate Court, an appeal from an appellate decree under s. 584 being strictly restricted to matters contained in the decree alone.—*Koylash Chunder Koosari v. Ram Lal Nag*, I. L. R., 6 Cal. 206.

APPLICATIONS for the extension of the period for the submission of an award and orders thereon should be made in writing and recorded. When a party has been prejudiced by having the time allowed for taking objections to an award curtailed by the Court, no appeal lies, but a review should be granted by the Court of first instance.—*Monji Premji Set (Plaintiff), Appellant, v. Maliyakel Koyassan Koya Haji (Defendant), Respondent*, I. L. R., 3 Mad. 59.

NOTHING remained to be done in a suit except to hear arguments, for which a time had been appointed. Neither the plaintiff nor his pleader appeared at the appointed time. The Court consequently dismissed the suit. *Held* that its decree was appealable under s. 540 of Act X. of 1877, and the lower Appellate Court should have entertained the appeal and disposed of it with reference to the provisions of s. 565, and ss. 102 and 103 were not applicable to the circumstances.—*Raichand (Plaintiff) v. Mathura Prasad and others (Defendants)*, I. L. R., 3 All. 292.

WHERE the Court of first instance held that the land sued for was not included in the defendant's garden, and they were not the owners of it, but that they could not be ejected from it as they were in possession under a lease which had not expired, and that the question whether such land was included in the defendant's garden, and that they were the owners of it, was not *res judicata*; and the Court made a decree dismissing the suit in these terms, "Ordered that the plaintiff's claim as it stands at present be dismissed": *Held* that the defendants were entitled, under Act X. of 1877, s. 540, to appeal from such decree.—*Lachman Singh v. Mohan*, I. L. R., 2 All. 497 (F. B.).

By a decree in an administration-suit, A was appointed receiver "to manage the estate." A died, and by a subsequent order B was appointed receiver. One of the defendants in the suit applied to have B removed from the office of receiver on the ground of his alleged mismanagement of the estate. The application was refused. *Held* that the order of refusal was appealable, whether the former Code or the present Code of Civil Procedure was deemed to be applicable, being an order made in respect of a question arising between the parties to a suit relating to the execution of the decree.—*Mithibai (Plaintiff) v. Limji Nowroji Banaji and others (Defendants); Harivallubhdas Calliandás (Original Defendant), Appellant, v. Ardasar Framji Moos (Receiver and Respondent)*, I. L. R., 5 Bom. 45.

WHERE a Judge, after the defendant's written statement was put in, framed certain preliminary issues, and decided them, directing part of plaintiff's claim to be dismissed, and part to be tried on the merits (which trial might necessitate the taking of an account from defendant). *Held* that no appeal lies from such an order either on the part of the plaintiff because the Civil Procedure Code only allows an appeal against a portion of the decision when there has been a decision relating to the disposal of the entire suit, or on the part of the defendant inasmuch as there had been no final order to take an account.—*Udai Rájah Rája Velugoti Kumára Yáchama Náyadu Bahadur, Panch Hazar Munsuhdár Rája of Venkatagiri (Plaintiff), Appellant in R. A. 52 and Respondent in R. A. 63 of 1880, v. Mahommed Rahimtulla Sahib (Defendant), Respondent in R. A. 52 and Appellant in R. A. 63 of 1880*, I. L. R., 3 Mad. 13.

THE plaintiffs, the widow and son respectively of N, deceased, claimed immoveable property inherited from his father by N, and also immoveable property which had devolved upon N from his brother, who had predeceased him, and mesne-profits of such properties. The Court of first instance, finding that the claim to the former property was admitted, and that to the latter was not denied, but resisted as barred by s. 13 of Act X. of 1877, and holding it not to be so barred, made a decree returning the plaint to the plaintiffs that they might, after correcting it, file it either in the Revenue Court in regard to the profits of the former property, or in the Civil Court for possession of the latter property. *Held* that although the claim of the plaintiffs was not either decreed or dismissed, yet as the right and title asserted by them to such properties was implicitly recognised by such decree, the defendants were entitled to appeal from it.—*Behari Bhagat (Defendant) v. Begam Bibi and others (Plaintiffs)*, I. L. R., 3 All. 75.

M SUED K and J to enforce a right of pre-emption in respect of property which he alleged K had sold to J. K denied that she had sold such property to J. J set up as a defence that M had waived his right of pre-emption. The Court of first instance dismissed the suit on the ground that the alleged sale had not taken place.

J appealed, making M and K respondents. The lower Appellate Court dismissed the appeal, also holding that the alleged sale had not taken place. J then appealed to the High Court, making K the respondent. *Held* that neither the appeal from the original decree in the suit, nor the appeal from the appellate decree therein, was admissible. *Held* also that the finding as to the alleged sale was one between the plaintiff and defendants in the suit, and not between the defendant-vendor and the defendant-vendee, who were litigating, and would not bar adjudication of the matter in issue between them in a suit brought by the latter for the establishment of the sale.—Jumna Singh and another (Defendants) v. Kamar-un-nisa (Plaintiff), I. L. R., 3 All. 152 (F. B.).

541. The appeal shall be made in the form of a memorandum in writing presented by the appellant, and shall be accompanied by a copy of the decree appealed against and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded.

Form of appeal.

What to accompany memorandum.

Such memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed against, without any argument or narrative; and such grounds shall be numbered consecutively.

AN ORDER made under Act X. of 1877, s. 409, refusing leave to sue as a pauper, is subject to review under s. 623. The provisions of s. 413 do not affect the right of a person against whom such order has been made to obtain a review. A petitioner applying for such review must file a copy of the order of which he seeks a review, together with a memorandum of objections (ss. 541 and 625).—Adarji Edulji v. Manikji Edulji, I. L. R., 4 Bom. 414.

542. The appellant shall not, without the leave of the Court, urge or be heard in support of any other ground of objection; but the Court, in deciding the appeal, shall not be confined to the grounds set forth by the appellant:

Provided that the Court shall not rest its decision on any ground not set forth by the appellant, unless the respondent has had sufficient opportunity of contesting the case on that ground.

Not only may the plea of *res judicata*, though not taken in the memorandum of appeal, be entertained in second appeal, under the provisions of s. 542 of Act X. of 1877, but even when such plea has not been urged in either of the lower Courts, or in the memorandum of appeal, if raised in the second appeal, it must be considered and determined either upon the record as it stands, or after a remand for finding of fact.—Muhammad Ismail (Plaintiff) v. Chattar Singh and another (Defendants), I. L. R., 4 All. 69.

HELD by Pearson, J., and Straight, J. (Spankie, J., dissenting) as follows: That in disposing of a second appeal the High Court is competent under s. 542 of Act X. of 1877 to consider the question whether the plaintiff has any cause of action or not, although such question has not been raised by the defendant-appellant in the Courts below or in his memorandum of second appeal, but is raised for the first time at the hearing of such appeal. That the cause of action of a person claiming the right of pre-emption in the case of a conditional sale arises when the conditional sale takes place and not when it becomes absolute; and therefore, where a conditional sale took place in 1867, and after it had become absolute a person sued to enforce his right of pre-emption in respect of the property sold, basing his claim upon a special agreement made in the interval between the date of the conditional sale and the date that it became absolute, and alleging that his cause of action arose on the latter date, that the suit was not maintainable, the plaintiff having no right of pre-emption at the time of the conditional sale.—Lachman Pershad (Defendant) v. Bahadur Singh and others (Plaintiffs), I. L. R., 2 All. 884.

543. If the memorandum of appeal be not drawn up in the manner hereinbefore prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court or be amended then and there.

When the Court rejects under this section any memorandum, it shall record the reasons for such rejection.

When a memorandum of appeal is amended under this section, the Judge, or such officer as he appoints in this behalf, shall attest the amendment by his signature.

544. Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed against proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal against the whole decree, and thereupon the Appellate Court may reverse or modify the decree in favour of all the plaintiffs or defendants, as the case may be.

One of several plaintiffs or defendants may obtain reversal of whole decree if it proceed on ground common to all.

THE Court of Appeal has power under Act VIII. of 1859, s. 337 (corresponding with Act X. of 1877, s. 544), to draw up what would be a fair decree as regards all the parties to a suit, although some of them may not have appealed.—*Joykisto Cowar v. Nittyanund Nundy*, I. L. R., 3 Cal. 738. But see 2 P. C. R., 766 (11 B. L. R., 375; L. R. I. A., Sup., 135).

Of Staying and Executing Decrees under Appeal.

545. Execution of a decree shall not be stayed by reason only of an appeal having been preferred against the decree; but the Appellate Court may, for sufficient cause, order the execution to be stayed:

If an application be made for stay of execution of an appealable decree before the expiry of the time allowed for appealing therefrom, the Court which passed the decree may, for sufficient cause, order the execution to be stayed:

Provided that no order shall be made under this section unless the Court making it is satisfied—

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

THE present applicant having taken out execution of a decree held by him, and the judgment-debtor having appealed to the District Court, the two opponents became sureties under s. 338 of Act VIII. of 1859, that the judgment-debtor would "obey and fulfill all such orders and decrees as should be given against him in appeal," and, in default of his so doing, they bound themselves "to pay jointly and severally, at the order of the Court, all such sums as the Court should, to the extent of Rs. 812-8-0, adjudge." Held that the obligation of the sureties to fulfill the decree of the appellate Court was not confined to the first decree of that Court, but extended to the final decree which it passed upon the case being remanded by the High Court in special appeal.—*Shivlall Khubchand (Applicant) v. Apaji Bhivray and others (Opponents)*, I. L. R., 2 Bom. 654.

546. If an order is made for the execution of a decree against which an appeal is pending, the Court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be given for the restitution of any property which may be taken in execution of the decree, or for the payment of the value of such property, and for the due performance of the decree or order of the Appellate Court,

or the Appellate Court may, for like cause, direct the Court which passed the decree to take such security.

And when an order has been passed for the sale of immoveable property in execution of a decree for money, and an appeal is pending against such decree, the sale shall, on the application of the judgment-debtor, be stayed until the appeal is disposed of, on such terms as to giving security or otherwise as the Court which passed the decree thinks fit.

547. No such security as is mentioned in sections 545 and 546 shall be required from the Secretary of State for India in Council, or (when Government has undertaken the defence of the suit) from any public officer sued in respect of an act alleged to be done by him in his official capacity.

Of Procedure in Appeal from Decrees.

548. When a memorandum of appeal is admitted, the Appellate Court or the proper officer of that Court shall endorse thereon the date of presentation, and shall register the appeal in a book to be kept for the purpose.

Such book shall be called the Register of Appeals.

549. The Appellate Court may, at its discretion, either before the respondent is called upon to appear and answer, or afterwards on the application of the respondent, demand from the appellant security for the costs of the appeal, or of the original suit, or of both :

Provided that the Court shall demand such security in all cases in which the appellant is residing out of British India, and is not possessed of any sufficient immoveable property within British India independent of the property (if any) to which the appeal relates.

If such security be not furnished within such time as the Court orders, the Court shall reject the appeal.

S. 549 of the Civil Procedure Code applies to all appeals, including appeals *in forma pauperis*.—*Seshienger v. Jain-ul-avadin*, 4 Ind. Jur. 507.

WHERE the Appellate Court demands from an appellant security for costs, the Court may extend the time within which it orders such security to be furnished ; but if no application is made for such extension of time, and such security is not paid within the time entered, it is imperative on the Court, under Act X. of 1877, s. 549, to reject the appeal. *Haidri Bai (Plaintiff) v. The East Indian Railway Company*, I. L. R., 1 All. 687.

A SUITOR *in forma pauperis* may be called on to give security for costs under s. 549 of the Civil Procedure Code, but very special grounds must be shown to support such an application.—Nusseeruddeen Biswas v. Ujjal Biswas (17 Sudh W. R. 68) dissented from.—Seshāyyangar and another (Sixth and Ninth Respondents in S. A. 663 of 1879), Petitioners, v. Jaingulavadin and another (Appellants in S. A. 663 of 1879), Counter-Petitioners, I. L. R., 3 Mad. 66.

Appellate Court to give notice to Court whose decree appealed against.

550. When the memorandum of appeal is registered, the Appellate Court shall send notice of the appeal to the Court against whose decree the appeal is made.

If the appeal be from a Court the records of which are not deposited in the Appellate Court, the Court receiving such notice shall send, with all practicable despatch, all material papers in the suit, or such papers as may be specially called for by the Appellate Court.

Either party may apply in writing to the Court against whose decree the appeal is made, specifying any of such papers in such Court of which he requires copies to be made; and copies of such papers shall be made at the expense of the applicant, and shall be deposited accordingly.

551. The Appellate Court may, if it thinks fit, after fixing a time for hearing the appellant or his pleader, and hearing him accordingly if he appears at such time, confirm the decision of the Court against whose decree the appeal is made, without sending notice of the appeal to such Court, and without serving notice on the respondent or his pleader; but in such case the confirmation shall be notified to the same Court.

Power to confirm decision of lower Court without sending it notice.

THE order of adjudication made under s. 551 of the Civil Procedure Code is a decree, and the procedure authorized under that section does not dispense with the necessity of drawing up a judgment.—Royal Reddi (Second Plaintiff), Appellant, v. Linga Reddi (Defendant) Respondent, I. L. R., 3 Mad. 1.

THE plaintiff sued to recover possession of certain immoveable property sold to him by the first defendant, a Hindu widow. The second defendant answered that his father and the first defendant's husband were undivided brothers, and that, as a childless widow, she had no right to sell the property. Both the Lower Courts upheld the sale as absolute, on the ground that she was competent to make it as widow of a separate Hindu. The District Judge heard the appeal *ex-parte* under Act X. of 1877, s. 551: *Held* that the decrees of the Lower Courts were unsustainable, as they did not contain the limitation pointed out above, and remanded the case for the trial of the issue, whether there were any such special circumstances as would justify the absolute sale by the first defendant to the plaintiff; and that the District Judge ought not to have disposed of the appeal *ex-parte* under Act X. of 1877, s. 551.—Gurunāth Nilkanath v. Krishnāji Govind, I. L. R., 4 Bom. 462.

ON AN appeal from a decision in a civil suit of the Assistant Commissioner of Ajmere to the Commissioner of Ajmere, the latter, feeling doubtful on a question of the nature specified in the Ajmere Court's Reg. I. of 1877, s. 17, referred such question, under s. 36 of that Regulation, to the Chief Commissioner of Ajmere and Mairwara. The Chief Commissioner dealt with the case as prescribed in s. 37 of that Regulation, and returned it to the Commissioner, who dismissed the suit in accordance with the Chief Commissioner's judgment. The plaintiff preferred an appeal to the Chief Commissioner from the Commissioner's decision. The Chief Commissioner did not make any order on the memorandum of appeal admitting it, or directing that it should be registered, or that the respondent should be summoned, or that the

appellant should appear on a certain day under Act X. of 1877, s. 551, but issued a notice to the appellant's Counsel to appear on a certain day. The Appellant's Counsel appeared on that day, and the Chief Commissioner intimated that he was acting under Act X. of 1877, s. 551. The Appellant's Counsel then proceeded to address the Chief Commissioner, and was heard for some time, and then stopped, in consequence of the Chief Commissioner resolving to refer to the High Court the question whether the appeal from the Commissioner's decision lay to him or to Her Majesty in Council. The Chief Commissioner subsequently referred such a question to the High Court: *Held* by the Full Bench, on a reference by a Division Bench before which the Chief Commissioner's reference came, that such question arose "in the trial of an appeal" within the meaning of the Ajmere Court's Reg. I. of 1877, s. 21, and was properly referred to the High Court: *Held* by the Division Bench that the appeal from the Commissioner's decision lay, in this particular case, not to the Chief Commissioner, but to Her Majesty in Council.—*Thakur of Masuda v. The Widows of the Thakur of Nandwara*, I. L. R., 2 All. 819 (F. B.).

552. The Appellate Court, unless where it confirms, under section

Day for hearing appeal. 551, the decision of the lower Court, shall fix a day for hearing the appeal.

Such day shall be fixed with reference to the current business of the Court, the place of residence of the respondent, and the time necessary for the service of the notice of appeal, so as to allow the respondent sufficient time to appear and answer the appeal on such day.

553. Notice of the day so fixed shall be stuck up in the appellate

Publication and service of notice of day for hearing appeal. court-house, and a like notice shall be sent by the Appellate Court to the Court against whose decree the appeal is made, and shall be served on the respondent or on his pleader in the Appellate Court in the manner provided in Chapter VI. for the service on a defendant of a summons to appear and answer; and all rules applicable to such summons, and to proceedings with reference to the service thereof, shall apply to the service of such notice.

Instead of sending the notice to the Court against whose decree the appeal is made, the Appellate Court may itself cause notice to be served on the respondent or his pleader under the rules above referred to.

554. The notice to the respondent shall declare that, if he does not

Contents of notice. appear in the Appellate Court on the day so fixed, the appeal will be heard *ex parte*.

Procedure on Hearing.

555. On the day so fixed, or on any other day to which the hearing

Right to begin. may be adjourned, the appellant shall be heard in support of the appeal. The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply.

556. If, on the day so fixed, or any other day to which the hearing

Dismissal of appeal for appellant's default. may be adjourned, the appellant does not attend in person or by his pleader, the appeal shall be dismissed for default.

If the appellant attends, and the respondent does not attend, the
Hearing appeal *ex parte*. appeal shall be heard *ex parte* in his absence.

WHEN an appeal is dismissed, under Act X. of 1877, s. 556, for the appellant's default, the order dismissing it is not appealable.—*Ahmad Baksh v. Gobindi*, I. L. R., 2 All. 616.

AN order under s. 556 of Act X. of 1877, dismissing an appeal for the appellant's default, is not a "decree" within the meaning of s. 2, and is not appealable.—*Mukhi (Judgment-debtor) v. Fakir (Decree-holder)*, I. L. R., 3 All. 382.

WHERE a suit has been instituted under Act VIII. of 1859, but decided at a time when Act X. of 1877 had come into operation, and an appeal is presented against such decision, s. 3 of the latter Act distinctly indicates that such an appeal is to be governed by the law of procedure in force at the date of the presentation of the appeal. Where, therefore, an appeal, presented when Act X. of 1877 was in force, has been dismissed under s. 556 of that Act, the appellant may apply for its re-admission under s. 558; and if such re-admission is refused, he is entitled to an appeal under s. 558.—*Elahi Buksh v. Marachow*, I. L. R., 4 Cal. 825.

557. If, on the day so fixed, or any other day to which the hearing

Dismissal of appeal where notice not served in consequence of appellant's failure to deposit cost.

may be adjourned, it is found that the notice to the respondent has not been served in consequence of the failure of the appellant to deposit, within the period fixed by the Court, the sum required to defray the cost of issuing the notice, the Court may order that the appeal be dismissed :

Provided that no such order shall be passed, although the notice

Proviso.

has not been served upon the respondent, if on the day fixed for hearing the appeal the re-

spondent appears in person, or by a pleader, or by a duly authorized agent.

558. If an appeal be dismissed under section 556 or section 557,

Re-admission of appeal dismissed for default.

the appellant may apply to the Appellate Court for the re-admission of the appeal, and if it be proved that he was prevented by any sufficient cause from attending when the appeal was called on for hearing or from depositing the sum so required, the Court may re-admit the appeal on such terms as to costs or otherwise as the Court thinks fit to impose upon him.

AN order under s. 556 of Act X. of 1877, dismissing an appeal for the appellant's default, is not a "decree" within the meaning of s. 2, and is not appealable.—*Mukhi (Judgment-debtor) v. Fakir (Decree-holder)*, I. L. R., 3 All. 382.

ON an application under s. 558 of the Code of Civil Procedure for the re-admission of an appeal which had been decided *ex parte* against the applicant, it appeared that he had been misled by reason of the appeal having been transferred from the file of one Court to another, no notice of the transfer having been given to him by the pleaders in the case. Held that, under the circumstances, the applicant was entitled to have the appeal re-admitted.—*Narain Singh (Defendant), Appellant, v. Bhewrah Charan Panda and another (Plaintiffs), Respondents*, 8 Cal. Law Rep. 350.

WHERE a suit has been instituted under Act VIII. of 1859, but decided at a time when Act X. of 1877 had come into operation, and an appeal is presented against such decision, s. 3 of the latter Act distinctly indicates that such an appeal is to be governed by the law of procedure in force at the date of the presentation of the appeal. Where, therefore, an appeal, presented when Act X. of 1877 was in force, has been dismissed under s. 556 of that Act, the appellant may apply for its re-admission under s. 558; and if such re-admission is refused, he is entitled to an appeal under s. 558.—*Elahi Buksh v. Marachow*, I. L. R., 4 Cal. 825.

AN Appellate Court, the appellant not attending in person or by his pleader, instead of dismissing the appeal for default, as provided by s. 556 of Act X. of 1877, proceeded, in contravention of the provision of that law, to dispose of the appeal on

the merits, and dismissed it. The appellant preferred a second appeal in the High Court, contending that the Appellate Court had acted contrary to law. *Held* that the Appellate Court had so acted, and its decision could only be treated as a dismissal for default, and that, so treating it, the proper and only course open to the appellant was to have applied under s. 558 for the re-admission of his appeal, and under these circumstances the second appeal would not lie. *Nand Ram v. Muhammad Bakhs* (I. L. R., 2 All. 616) followed.—*Kanahi Lal and others (Defendants) v. Naubat Rai (Plaintiff)*, I. L. R., 3 All. 519.

559. If it appear to the Court at the hearing that any person who was a party to the suit in the Court against whose decree the appeal is made, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court, and direct that such person be made a respondent.

560. When an appeal is heard *ex parte* in the absence of the respondent, and judgment is given against him, he may apply the Appellate Court to re-hear the appeal; and if he satisfies the Court that the notice was not duly served, or that he was prevented by sufficient cause from attending when the appeal was called on for hearing, the Court may re-hear the appeal on such terms as to costs or otherwise as the Court thinks fit to impose upon him.

WHEN an appeal has been heard *ex parte*, a re-hearing cannot be granted by the Court on an application under s. 560 of the Civil Procedure Code, except upon legal evidence produced by the respondent of the facts necessary to entitle him to such re-hearing.—*Muhammad Khan (Appellant) v. Dinomolee Dasha and another (Respondents)*, 8 Cal. Law Rep. 112.

AN applicant, presenting a petition for the re-hearing of an appeal decided *ex parte*, must, at the time of making such application, be prepared to satisfy the Court that the notice of appeal was not duly served upon him, or that he was prevented by sufficient cause from attending when the appeal was called on for hearing.—*Anunda Saha Biswas alias Nyomuddin Sha Biswas v. Kema Bebee*, I. L. R., 6 Cal. 548.

AN appeal was heard *ex parte* in the absence of the respondent (defendant), and the judgment was given against him. He applied to the Appellate Court to re-hear the appeal, and the Appellate Court refused to re-hear it. He then appealed, not from the order refusing to re-hear the appeal, but from the decree of the Appellate Court. *Held* that he was not debarred, by reason that he had not appealed from the order refusing to re-hear the appeal, from appealing from the decree of the Appellate Court.—*Ram Jas (Defendant) v. Baij Nath (Plaintiff)*, I. L. R., 2 All. 567.

A SECOND appeal does lie from an *ex parte* judgment without requiring the appellant to resort to a re-hearing under s. 560. S. 119 of the old Code prohibited an appeal from an *ex parte* judgment; but there is no corresponding section to it in the new Code. It is true that s. 560 enables a respondent to move for a re-hearing when the appeal is heard *ex parte*, provided he can satisfactorily account for his omission to appear at the hearing; but this section is permissive, not mandatory. The new Code seems to leave it to the party concerned to decide whether he ought to seek a re-hearing or prefer a second appeal.—*Modalatha Kunhi Kanna Kurup (1st Defendant)*, 3 Ind. Jur. 167.

561. Any respondent, though he may not have appealed against any part of the decree, may, upon the hearing, not only support the decree on any of the grounds decided against him in the Court below, but take any objection to the decree which he

Upon hearing, respondent may object to decree as if he had preferred separate appeal.

could have taken by way of appeal, provided he has filed a notice of such objection not less than seven days before the date fixed for the hearing of the appeal.

Such objection shall be in the form of a memorandum, and the

Form of notice, and provisions applicable thereto. provisions of section 541, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

AN APPEAL having been filed on the 10th April, 1879, and the date for hearing fixed for May, 1879, a memorandum of objections under s. 521 of the Civil Procedure Code was filed by the respondent on the 18th September, 1879, before the actual hearing which took place in July, 1880. *Held* that the memorandum of objections, under s. 561 of the Code of Civil Procedure as amended by s. 86 of Act XII. of 1879, ought to have been filed not less than seven days before the date fixed for hearing, and was therefore inadmissible. On an application for review : *Held* (per Maclean, J., distinguishing the case of *Ratansi Hullanji*, I. L. R., 2 Bom. 184), that nothing having been done, and no proceeding having been commenced by the respondent up to 31st May, 1879, under the Procedure Code as it existed prior to that date, the filing of the memorandum was governed by the present Code as amended, and therefore inadmissible. *Held* (per Mitter, J.) that the appeal, having been filed before Act XII. of 1879 was passed, was a proceeding within the meaning of s. 6 of the General Clauses Act, I. of 1868, and that the new Act therefore did not affect the appeal.—*Ram Gobind Jugodeb* (Defendant), Appellant, *Denobundlu Sri Chundun Mohapatter* (Plaintiff), Respondent, 9 Cal. Law Rep. 281.

562. If the Court against whose decree the appeal is made has dis-

Remand of case by Appellate Court. posed of the suit upon a preliminary point so as to exclude any evidence of fact which appears to the Appellate Court essential to the determination of the rights of the parties, and the decree upon such preliminary point is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, together with a copy of the order in appeal, to the Court against whose decree the appeal is made, with directions to re-admit the suit under its original number in the register, and proceed to (investigate) the suit on the merits.

The Appellate Court may, if it thinks fit, direct what issue or issues shall be tried in any case so remanded.

AN APPEAL from an order on appeal remanding a suit for re-trial is not to be confined to the question whether the remand has been made contrary to the provisions of s. 562 of Act X. of 1877 or not, but the question whether the decision of the Appellate Court on the preliminary point is correct or not may also be raised and determined in such an appeal.—*Badam* (Defendant) *v.* *Imrat and others* (Plaintiffs), I. L. R., 3 All. 675.

By THE amendment of the plaint a suit for the restoration of a pond, which it was alleged the defendants were wrongfully filling up, to its original condition, was altered into one for the protection of the plaintiffs from any infringement of, or for a declaration of their right to a share in the produce, and the use of the water, by way of easement : *Held* that the alteration in the plaint was a material one ; and that an Appellate Court is not empowered by Act X. of 1877 to order or allow a plaint to be amended, or to remand a case under s. 562 of that Act for the purpose of such amendment.—*Farzand Ali v. Yusuf Ali*, I. L. R., 2 All. 669.

AS THE Limitation Act (XV. of 1877) shortens the period of limitation in the case of promissory notes payable on demand, the period of limitation in respect of such notes executed prior to 1st October 1877 is governed by the provisions of s. 2 of the Act. When a Court of first instance, after taking evidence, dismisses a suit upon a preliminary objection without giving a decision upon the merits of the case, and the

decree is reversed on appeal, the Court of appeal, if it considers the evidence on record sufficient, may decide the case, and is not bound to remand it for trial under s. 562 of the Civil Procedure Code.—*Bandi Subbayya (Defendant), Appellant, v. Madalapalli Subanna (Plaintiff), Respondent*, I. L. R., 3 Mad. 96.

THE Court of first instance made an order returning the plaint in a suit to be presented to the proper Court, on the ground that it was not competent to try such suit. On appeal from such order the Appellate Court, holding that the Court of first instance was competent to try such suit, made an order "decreeing the appeal." It subsequently made an additional order directing that the case "should be returned for re-trial." On appeal to the High Court from such additional order, *held* that the appeal would not lie, as it was in reality one from an order passed in appeal from an order returning a plaint, which, under the last clause of s. 588 of Act X. of 1877, was final, and not an appeal from an order remanding a case under s. 562, the character of the original order of the Appellate Court not being altered by the passing of the additional order.—*Krishna Ram (Defendant) v. Narsingh Sevak Singh and others (Plaintiffs)*, I. L. R., 3 All. 855.

UPON an appeal, under s. 588, clause *w*, of the Civil Procedure Code, from an order of an Appellate Court under s. 562, remanding a case which has been disposed of upon a preliminary point in the Court of first instance, the High Court may enter into the merits of the adjudication by the Court of first instance on the preliminary point, and may, if it finds the order of the lower Appellate Court defective, allow the party, who had the benefit of a decree in the first Court, to retain that benefit. The purchaser of the rights and interests of a judgment-debtor who is a member of a joint family, at a sale in execution of a decree, does not acquire any title to the rights and interests of the other members of the family, unless it is clear that the judgment-debtor was sued in a representative capacity. *Muddun Thakur v. Kantoo Lall* (I. L. R., 2 Cal. 379) distinguished.—*Loki Mahito and others (Plaintiffs) v. Aghoree Ajail Lall and others (Defendants)*, I. L. R., 5 Cal. 144.

563. When a case is remanded with directions to take any evidence

When further evidence so excluded, the Court to which the case is re-barred. remanded shall not take any other evidence in the case, except evidence tendered to contradict the evidence so taken.

Limit to remand.

564. The Appellate Court shall not remand a case for a second decision, except as provided in section 562.

565. When the evidence upon the record is sufficient to enable

When evidence on record sufficient, Appellate Court shall determine case finally. the Appellate Court to pronounce judgment, the Appellate Court (shall,) after resettling the issues, if necessary, finally determine the case, notwithstanding that the judgment of the Court against whose decree the appeal is made has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.

566 If the Court against whose decree the appeal is made has

When Appellate Court may frame issues and refer them for trial to Court whose decree appealed against. omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, (and the evidence upon the record is not sufficient to enable the Appellate Court to determine such issue or question,) the Appellate Court may frame issues for trial, and may refer the same for trial to the Court against whose decree the appeal is made, and in such case shall direct such Court to take the additional evidence required,

and such shall Court proceed to try such issues, and shall return to the Appellate Court its find thereon, together with the evidence.

ASSUMING that an Appellate Court, in deciding a case in a manner inconsistent with and opposed to the finding returned to it by the Court of first instance under Act X. of 1877, s. 566, in the absence of objections, acted irregularly, its decree could not be reversed on the case remanded on account of such irregularity, such irregularity not affecting the merits of the case or the jurisdiction of the Court.—*Akbari Begam v. Wilayat Ali*, I. L. R., 2 All. 908.

WHERE an Appellate Court, under Act VIII. of 1859, s. 354, refers to a lower Court issues for trial, and fixes a time within which, after the return of the finding, either party to the appeal may file a memorandum of objections to the same, neither party is entitled, without the leave of the Court, to take any objection to the finding, orally or otherwise, after the expiry of the period so fixed, without his having filed such memorandum.—I. L. R., 1 All. 165. So also under Act X. of 1877, s. 566.—*Akbari Begam v. Wilayat Ali*, I. L. R., 2 All. 908.

AS THE Limitation Act (XV. of 1877) shortens the period of limitation in the case of promissory notes payable on demand, the period of limitation in respect of such notes executed prior to 1st October 1877 is governed by the provisions of s. 2 of the Act. When a Court of first instance, after taking evidence, dismisses a suit upon a preliminary objection without giving a decision upon the merits of the case, and the decree is reversed on appeal, the Court of appeal, if it considers the evidence on record sufficient, may decide the case, and is not bound to remand it for trial under s. 562 of the Civil Procedure Code.—*Bandi Subhayya* (Defendant), Appellant, v. *Madalapalli Subanna* (Plaintiff), Respondent, I. L. R., 3 Mad. 96.

IN A suit for negligence, where it is possible that the Court may take one or more different views as to the proper measure of damages, the plaintiff must come prepared with evidence as to the amount of damages according to whichever view the Court may adopt; and if the evidence produced is applicable to one view only, the Court cannot give the plaintiff a retrial, and allow him to remodel his case with fresh evidence under Act X. of 1877, s. 566. That section is intended to provide for cases where some point has come to light in the Appellate Court, which has not been raised, or the importance of which has not occurred to the parties or to the Judge in the Court below.—*Anundolall Doss v. Boycaunt Ram Roy*, I. L. R., 5 Cal. 283.

567. Such finding and evidence shall become part of the record in the suit; and either party may, within a time to be fixed by the Appellate Court, present a memorandum of objections to the finding.

Finding and evidence to be put on record.

Objections to finding.

After the expiration of the period fixed for presenting such memorandum, the Appellate Court shall proceed to determine the appeal.

Determination of appeal.

568. The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if

(a) the Court against whose decree the appeal is made refuses to admit evidence which ought to have been admitted, or

(b) the Appellate Court requires any document to be produced for any witness to be examined to enable it to pronounce judgment; or for any other substantial cause,

the Appellate Court may allow such evidence to be produced, or document to be received, or witness to be examined.

Whenever additional evidence is admitted by an Appellate Court, the Court shall record on its proceedings the reason for such admission.

569. Whenever additional evidence is allowed to be received, the Appellate Court may either take such evidence, or direct the Court against whose decree the appeal is made, or any other subordinate Court, to take such evidence, and to send it, when taken, to the Appellate Court.

Mode of taking additional evidence.

570. In all cases where additional evidence is directed or allowed to be taken, the Appellate Court shall specify the points to be defined and recorded. the points to which the evidence is to be confined, and record on its proceedings the points so specified.

Of the Judgment in Appeal.

571. The Appellate Court, after hearing the parties or their Judgment when and pleaders, and referring to any part of the proceedings, whether on appeal or in the Court where pronounced. against whose decree the appeal is made, to which reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day, of which notice shall be given to the parties or their pleaders.

572. The judgment shall be written in English; provided that, if English is not the mother-tongue of the Judge, and he is not able to write an intelligible judgment in English, the judgment shall be written in his mother-tongue or in the language of the Court.

573. When the language in which the judgment is written is not the language of the Court, the judgment shall, if any party so require, be translated into such language, and the translation, after it has been ascertained to be correct, shall be signed by the Judge or such officer as he appoints in this behalf.

574. The judgment of the Appellate Court shall state—
 Contents of judgment. (a) the points for determination;
 (b) the decision thereupon;
 (c) the reasons for the decision; and,
 (d) when the decree appealed against is reversed or varied, the relief to which the appellant is entitled;
 and shall, at the time that it is pronounced, be signed and dated by the Judge or by the Judges concurring therein.
 Date and signature.

THE order of adjudication made under s. 551 of the Civil Procedure Code is a decree, and the procedure authorized under that section does not dispense with the necessity of drawing up a judgment.—Royal Reddi (Second Plaintiff), Appellant, v. Linga Reddi (Defendant), Respondent, I. L. R., 3 Mad. 1.

575. When the appeal is heard by a Bench of two or more Judges, the appeal shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges.

If there be no such majority which concurs in a judgment varying or reversing the decree appealed against, such decree shall be affirmed:

Provided that, if the Bench hearing the appeal is composed of two Judges belonging to a Court consisting of more than two Judges, and the Judges composing the Bench differ in opinion on a point of law, the appeal may be referred to one or more of the other Judges of the same Court, and shall be decided according to the opinion of the majority (if any) of all the Judges who have heard the appeal, including those who first heard it.

When there is no such majority which concurs in a judgment varying or reversing the decree appealed against, such decree shall be affirmed.

The High Court may, from time to time, make rules consistent with this Code to regulate references under this section.

THE provisions of the Letters Patent of 1865, cl. 36, that when the Judges of a Division Bench are equally divided in opinion, the opinion of the Senior Judge shall prevail, has been superseded by Act X. of 1877, s. 575 (which is extended to miscellaneous proceedings of the nature of appeals by s. 647 of that Act), so far as regards cases to which s. 575 is applicable.—*Appaji Bhiváv v. Shivilál Khubchand*, I. L. R., 3 Bom. 204 (F. B.).

576. When the appeal is heard by more Judges than one, any

Dissent to be recorded.

Judge dissenting from the judgment of the Court shall state in writing the decision or order which he thinks should be passed on the appeal, and he may state his reasons for the same.

577. The judgment may be for confirming, varying, or reversing

What judgment may direct. or, if the parties to the appeal agree as to the form which the decree in appeal shall take, or as to the order to be passed in appeal, the Appellate Court may pass a decree or order accordingly.

M SUEDE K and J to enforce a right of pre-emption in respect of property which he alleged K had sold to J. K denied that she had sold such property to J. J set up as a defence that M had waived his right of pre-emption. The Court of first instance dismissed the suit on the ground that the alleged sale had not taken place. J appealed, making M and K respondents. The lower Appellate Court dismissed the appeal, also holding that the alleged sale had not taken place. J then appealed to the High Court, making K the respondent. *Held* that neither the appeal from the original decree in the suit, nor the appeal from the appellate decree therein, was admissible. *Held* also that the finding as to the alleged sale was one between the plaintiff and defendants in the suit, and not between the defendant-vendor and the defendant-vendee, who were litigating, and would not bar adjudication of the matter in issue between them in a suit brought by the latter for the establishment of the sale.—*Jumna Singh and another (Defendants) v. Kamar-un-nisa (Plaintiff)*, I. L. R., 3 All. 152 (F. B.).

578. No decree shall be reversed or substantially varied, nor shall

No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction.

any case be remanded, in appeal, on account of any error, defect, or irregularity, whether in the decision or in any order passed in the suit, or otherwise, not affecting the merits of the case or the jurisdiction of the Court.

THE refusal of a plaintiff-respondent to make good a deficiency in court-fees in respect of his plaint when called upon to do so by the Appellate Court is not a ground upon which the Appellate Court should reverse the decree of the Court of first instance and dismiss the suit.—*Mehdi Husain (Plaintiff) v. Madar Bakhsh and others (Defendants)*, I. L. R., 2 All. 889.

A SUIT was instituted and tried on the merits in the Court of a Subordinate Judge without any objection being taken, either by the defendants or by the Court, that the plaint was insufficiently stamped. The defendants appealed on the merits, and the District Judge, being of opinion that the stamp on the plaint was inadequate, called upon the plaintiff to pay the additional fee which would have been payable had the objection been taken and the question rightly decided in the Court of first

instance. *Held*, on second appeal, that the order of the Judge was properly made under s. 12, cl. ii. of the Court Fees Act, VII. of 1870.—*Shama Soondary v. Hurro Soondary*, I. L. R., 7 Cal. 348.

IN A suit to recover possession of certain immoveable property alleged to have been purchased by the plaintiff from a Hindu widow, who claimed to have held the same as heir of her husband, the defendant, who was the mother of the husband, contended, *inter alia*, that the alleged purchase and sale were invalid, by reason that she herself was entitled to maintenance out of the property. The first Court gave the plaintiff a decree, and this decree was affirmed on appeal by the District Judge, who, however, gave no reason of his own for his judgment, but merely adopted those of the lower Court. *Held* that, having regard to the nature of the case and the simplicity of the point for determination, the fact of the District Judge having omitted to state his reasons did not amount to such an error of law within the meaning of s. 578 of the Code of Civil Procedure as affected the merits of the case or the jurisdiction of the Court.—*Rohimoni Dabi* (one of the Defendants), Appellant, and *Zamir-ud-din* and others (Plaintiffs), Respondents, I. L. R., 8 Cal. Law Rep. 597.

THE sons of R and of K and of S possessed proprietary rights in two maháls of a certain mauza. P possessed proprietary rights in one of those maháls. In April, 1879, the sons of R sold their proprietary rights in both maháls to G. In August, 1879, the sons of K sold their proprietary rights in both maháls to G. Later in the same month the sons of S sold their proprietary rights in both maháls to N. G sued N to enforce a right of pre-emption in respect of the sale to the latter, and obtained a decree. P then sued to enforce a right of pre-emption in respect of the three sales mentioned above, so far as they related to the mahál of which he was a co-sharer, joining as defendants G and N and the vendors to them. G alone objected to the Court of first instance to the frame of the suits. That Court overruled the objection, and gave P a decree. The lower Appellate Court reversed this decree on the ground of misjoinder. *Held* that in respect of G there was no misjoinder, but that in respect of the other defendants there was misjoinder of both causes of action and parties. Inasmuch as, however, G alone objected to the frame of the suit, and the defect did not affect the merits of the case or the jurisdiction of the Court, the lower Appellate Court ought not, regard being had to s. 578 of Act X. of 1877, to have reversed the decree of the Court of first instance by reason of such defect.—*Kalian Singh* (Plaintiff) *v. Gur Dayal* (Defendant), I. L. R., 4 All. 163.

IN June, 1875, L executed a bond in favour of S in which he mortgaged, amongst other property, a village called *Chand Khera*, as security for the payment of certain moneys. He subsequently sold such village to A, concealing the fact that it had been mortgaged to S. On this fact coming to the knowledge of A, he threatened L with a criminal prosecution, whereupon L proposed to S, in writing, that the security of a share in a village called *Kelsa*, which he alleged was his property should be substituted for the security of *Chand Khera*. S accepted this proposal by a letter in which he referred to L's proposal in terms. It subsequently appeared that the share in *Kelsa* did not belong to L but to another person. S having sued upon his bond, claiming to enforce thereunder a lien upon *Chand Khera*, A set up as a defence to the suit that S had agreed to substitute *Kelsa* for *Chand Khera* in the bond, producing S's letter as evidence of the agreement. *Held*, that such letter operated as a release and should therefore have been stamped and registered. *Held* also, that an objection may properly be taken in a Court of first appeal to an unstamped document, and such Court is bound to entertain the objection and may direct that the document be stamped and the penalty imposed. *Held* also, that L's fraud vitiated S's agreement to substitute the security of *Kelsa* for the security of *Chand Khera* in the bond, and S was entitled, notwithstanding A might have purchased the latter property in good faith, to the enforcement of the lien created thereon by the bond. *Mark Ridded Currie v. S. V. Muttu Ramen Chetty*. (3 B. L. R. 126) discussed.—*Safdar Ali Khan* (Plaintiff) *v. Lachman Dass* and others (Defendants) I. L. R., 2 All. 554.

THE defendants in a suit on a bond admitted the execution of the bond, but denied that they had received, as the bond recited they had at the time of its execution, the consideration for it. The Court of first instance, instead of calling on the defendants to establish the fact that they had not received the consideration for the bond, as it ought to have done under the circumstances, irregularly allowed the

plaintiff to produce witnesses to prove that the consideration for the bond had been paid at the time of its execution. The evidence of these witnesses proved that the consideration of the bond had not been paid at the time of execution, and that, if it had been paid at all, it had been paid at some subsequent time. The plaintiff did not give any further evidence to establish such payment, and the Court of first instance, without calling on the defendants to establish their defence, dismissed the suit. The lower Appellate Court held that the defendants should have been required to begin under the circumstances, and reversed the decree of the Court of first instance, and gave the plaintiff a decree. *Held* that, although the plaintiff ought not to have begun, yet as he had done so, and his witnesses had proved that the consideration for the bond had not been paid as admitted in the bond, a new case was opened up, in which the *onus* was shifted back to the plaintiff to establish that he had, not at the time alleged in the bond, but at some subsequent time, paid to the defendants the consideration for the bond. Also that it was doubtful, having regard to the provisions of s. 578 of Act X. of 1877, whether it was competent for the lower Appellate Court to reverse the decision of the Court of first instance; but even if it were, the lower Appellate Court should not have ignored what had taken place, but should have dealt with the case in appeal in the shape it came before it.—*Makund and others (Defendants) v. Bahori Lal (Plaintiff)*, I. L. R., 3 All. 824.

Of the Decree in Appeal.

Date and contents of decree.

579. The decree of the Appellate Court shall bear date the day on which the judgment was pronounced.

The decree shall contain the number of the appeal, and the memorandum of appeal, including the names and description of the appellant and respondent, and shall specify clearly the relief granted or other determination of the appeal.

The decree shall also state the amount of costs incurred in the appeal, and by what parties and in what proportions such costs and the costs in the suit are to be paid.

The decree shall be signed and dated by the Judge or Judges who passed it:

Provided that where there are more Judges than one, if there be a difference of opinion among them, it shall not be necessary for any Judge dissenting from the judgment of the Court to sign the decree.

Judge dissenting from judgment need not sign decree.

THE order of adjudication made under s. 551 of the Civil Procedure Code is a decree, and the procedure authorized under that section does not dispense with the necessity of drawing up a judgment.—*Royal Reddi (Second Plaintiff), Appellant, v. Linga Reddi (Defendant), Respondent*, I. L. R., 3 Mad. 1.

Copies of judgment and decree to be furnished to parties.

580. Certified copies of the judgment and decree in appeal shall be furnished to the parties on application to the Court and at their expense.

581. A copy of the judgment and of the decree, certified by the Appellate Court or such officer as it appoints in this behalf, shall be sent to the Court which passed the decree appealed against, and shall be filed with the original proceedings in the suit, and an entry of the judgment of the Appellate Court shall be made in the register of civil suits.

Certified copy of decree to be sent to Court whose decree appealed against.

582. The Appellate Court shall have, in appeals under this chapter, the same powers, and shall perform, as nearly as may be, the same duties, as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted under Chapter V.; and in Chapter XXI., so far as may be, the words "plaintiff," "defendant," and "suit," shall be held to include an appellant, a respondent, and an appeal, respectively, in proceedings arising out of the death, marriage, or insolvency of parties to an appeal. *in dividing that of section 372.*

The provisions hereinbefore contained shall apply to appeals under this chapter, so far as such provisions are applicable.

UNDER s. 582 of the Civil Procedure Code, a Court of Appeal has the power, with the consent of the parties, of referring to arbitration matters in dispute in an appeal. *Jaggossar Dey v. K. M. Dassee* (12 B. L. R. 266) dissented from.—*Sangaralinam Pillai* (Plaintiff), Petitioner, I. L. R., 3 Mad. 78.

583. When a party entitled to any benefit (by way of restitution or otherwise) under a decree passed in an appeal under this chapter desires to obtain execution of the same, he shall apply to the Court which passed the decree against which the appeal was preferred; and such Court shall proceed to execute the decree passed in appeal, according to the rules hereinbefore prescribed for the execution of decrees in suits.

CHAPTER XLII.

OF APPEALS FROM APPELLATE DECREES.

584. Unless when otherwise provided by this Code or by any other law, from all decrees passed in appeal by any Court subordinate to a High Court, an appeal shall lie to the High Court on any of the following grounds (namely)—

Second appeals to High Court. Grounds of second appeal.

(a) the decision being contrary to some specified law or usage having the force of law;

(b) the decision having failed to determine some material issue of law or usage having the force of law;

(c) a substantial error or defect in the procedure as prescribed by this Code or any other law, which may possibly have produced error or defect in the decision of the case upon the merits.

A DEFENDANT who obtains a judgment in his favour in the Court of first instance, and who, on appeal by the plaintiff, does not appear at the hearing of the appeal, or present a petition for a rehearing, may, under Act X. of 1877, s. 584, present a second appeal against the decree of the lower Appellate Court.—*Modalatha ex parte*, I. L. R., 2 Mad. 75.

AN appellant, who has obtained a decree setting aside the decision of the Court of first instance is not entitled to a further appeal to the High Court, on the ground that he is dissatisfied with some of the findings recorded in the judgment of the lower Appellate Court, an appeal from an appellate decree under s. 584 being strictly restricted to matters contained in the decree alone.—*Koylash Chunder Koosari v. Ram Lall Nag*, I. L. R., 6 Cal. 206.

AN order on appeal from a decree in an original suit of the nature cognizable in Mufassal Courts of Small Causes, under s. 562 of Act X. of 1877, remanding the suit for re-trial, is appealable, s. 586 of Act X. of 1877 notwithstanding, as that section applies to appeals from appellate decrees, and not to appeals from orders.—

Collector of Bijnor, Manager of the estate of Chaudhri Ranjit Singh, a Minor (Defendant), v. Jafar Ali Khan (Plaintiff), I. L. R., 3 All. 18.

A SUIT to redeem a usufructuary mortgage of certain lands was instituted in the Munsif's Court. After the suit had been admitted and the parties called on to produce evidence, the Munsif ordered the plaintiff in the suit to be returned to the plaintiff for presentation in the proper Court, on the ground that the suit should have been instituted in the Court of the Subordinate Judge, the value of the property in suit being beyond the jurisdiction of a Munsif. *Held* that under Act VIII. of 1859, the Munsif's order was appealable to the lower Appellate Court, and, under Act X. of 1877, the lower Appellate Court's order to the High Court. Where the question in dispute in such a suit is not only whether the property has been redeemed out of the usufruct, but whether the property and the right to redeem belongs to the plaintiff, and the value of the property exceeds Rs. 1,000, such suit is not cognizable by a Munsif.—Kalian Dass and others (Plaintiffs) v. Nawal Singh and others (Defendants), I. L. R., 1 All. 620.

M SUEK K and J to enforce a right of pre-emption in respect of property which he alleged K had sold to J. K denied that she had sold such property to J. J set up as a defence that M had waived his right of pre-emption. The Court of first instance dismissed the suit on the ground that the alleged sale had not taken place. J appealed, making M and K respondents. The lower Appellate Court dismissed the appeal, also holding that the alleged sale had not taken place. J then appealed to the High Court, making K the respondent. *Held* that neither the appeal from the original decree in the suit, nor the appeal from the appellate decree therein, was admissible. *Held* also that the finding as to the alleged sale was one between the plaintiff and defendants in the suit, and not between the defendant-vendor and the defendant-vendee, who were litigating, and would not bar adjudication of the matter in issue between them in a suit brought by the latter for the establishment of the sale.—Jumna Singh and another (Defendants) v. Kamar-un-nisa (Plaintiff), I. L. R., 3 All. 152 (F. B.).

THE holder of a decree for money applied for the attachment, in the execution of decree, of certain monies deposited in Court to the credit of the judgment-debtor. On 4th June 1877, the Court of first instance refused the attachment on the ground that the decree directed the sale of certain immoveable property for its satisfaction, and awarded no other relief. The order of the Court of first instance was affirmed by the lower Appellate Court on the 4th August 1877. Act X. of 1877, repealing Act VIII. of 1859 and Act XXIII. of 1861, came into force on 1st October 1877. On 13th November 1877 the decree-holder applied to the High Court for the admission of a second appeal from the order of the lower Appellate Court, on the ground that the decree had been misconstrued: *Held* that an appeal under the repealed Act VIII. of 1859 was admissible under Act I. of 1868, s. 6, and that the order of the lower Appellate Court was also appealable under Act X. of 1877, s. 584.—I. L. R., 1 All. 668 (F. B.). See also I. L. R., 3 Cal. 662 (F. B.) and preceding case, and I. L. R., 2 All. 91; I. L. R., 5 Cal. 259. But see I. L. R., 2 All. 74.

WHEN the decree of a Subordinate Court is under appeal to the High Court, it is open to the High Court to vary it, either in points in which it is erroneous, or in respect of matters occurring subsequently to the date of such decree which are admitted. The plaintiff obtained a decree in a partition-suit in the Subordinate Judge's Court for his share in certain joint family property in the possession of the defendants (his co-parceners). The decree was affirmed on appeal. The defendants filed a second appeal in the High Court; but, before it was decided, one of the defendants died. The plaintiff, at the hearing of the second appeal, claimed a larger share in the family-property than he had been awarded by the decree of the Courts below. *Held* that he (plaintiff) was entitled to a share in that of the co-parcener who died *pendente lite*, and that the decree appealed from ought to be varied accordingly. Joy Narain Giri v. Girish Chunder Myte (I. L. R., 4 Cal. 434) distinguished. A decree for partition does not operate as a severance so long as it remains under appeal.—Sakharam Mahadev Dange (Original Defendant), Appellant, v. Hari Krishna Dange (Original Plaintiff), Respondent, I. L. R., 6 Bom. 113.

Second appeal on no other grounds.

585. No second appeal shall lie except on the grounds mentioned in section 584.

586. No second appeal shall lie in any suit of the nature cognizable in Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed five hundred rupees.

In applications for review of judgments of Courts of Small Causes constituted under Act XI. of 1865, the procedure laid down in the rules contained in chap. xlii. the Code of Civil Procedure (Act X. of 1877) is to be strictly followed, without reference to the procedure relating to new trials under s. 21 of Act XI. of 1865.—*Ishan Chander Banerjee v. Lochun Gope*, I. L. R., 5 Cal. Law Rep. 559.

A suit for money due on a contract within the meaning of Act XI. of 1865, s. 6, is none the less cognizable by a Small Cause Court, because it may be necessary to go into the accounts of both parties to see whether the amount claimed is really due or not. I. L. R., 1 Cal. 123 (24 W. R. 478). And therefore no second appeal lies in such a suit under Act X. of 1877 s. 586.—*Asman Singh v. Doorga Roy*, I. L. R., 6 Cal. 284.

An order on appeal from a decree in an original suit of the nature cognizable in Mufassal Courts of Small Causes, under s. 562 of Act X. of 1877, remanding the suit for re-trial, is appealable, s. 586 of Act X. of 1877 notwithstanding, as that section applies to appeals from appellate decrees, and not to appeals from orders.—*Collector of Bijnor, Manager of the estate of Chaudhri Ranjit Singh, a Minor (Defendant), v. Jafar Ali Khan (Plaintiff)*, I. L. R., 3 All. 18.

A suit by one decree-holder against another for the money received by the latter on a division between them of the proceeds of an execution-sale as his share of such proceeds, under the order of the Court executing the decrees, is a suit of the nature cognizable in a Court of Small Causes, and consequently, where the amount of such money does not exceed five hundred rupees, no second appeal lies in such suit.—*Mata Pershad (Defendant) v. Gauri (Plaintiff)*, I. L. R., 3 All. 59.

A suit by a landholder against a tenant for Rs. 130, being the value of a moiety of the produce of a grove of mango tree held by such tenant, such amount being claimed in value of an agreement recorded in the *wajib-ul-arz*, and not in virtue of any custom or right, is not cognizable in the Revenue Court, but is cognizable in a Court of Small Causes, and consequently no second appeal in the suit will lie.—*Sarnam Tewari and another (Defendant) v. Sakina Bibi (Plaintiff)*, I. L. R., 3 All. 37.

On the death of K a dispute arose among her heirs as to the succession to the share of which she was the recorded proprietor. In January, 1874, V who was not one of her heirs, and who was not a share-holder of such village, was recorded in the revenue register as lambardar in respect of her share, and was so recorded until February, 1878, when his name was expunged, and the name of B, who was one of the heirs, was recorded as the proprietor of such share. N subsequently sued B to recover Rs. 70-13-4, being the amount which he had paid on account of revenue in respect of such share during the period between January, 1874, and February, 1878, instituting such suit in a Civil Court (Munsif). *Held* that the suit was not one cognizable in a Revenue Court under s. 93 (g) of Act XVIII. of 1873, but one cognizable in a Civil Court. *Held* also that the suit was one for damages under s. 70 of Act IX. of 1872, within the meaning of s. 6 of Act XI. of 1865, and accordingly of the nature cognizable in a Court of Small Causes, and no second appeal in the suit would lie.—*Nath Prasad (Plaintiff) v. Baij Nath (Defendant)*, I. L. R., 3 All. 66.

A was the proprietor of nine annas of a mouza, B and his family of one anna, and C and others of the remaining six annas. B and his family having occupied and enjoyed, to the exclusion of their co-shareholders, fifty-four bighas of the mouza, failed to pay any rent in respect of the such occupation. A instituted a suit against them (making C and the other holders of the six annas share defendants to the suit) to recover the sum of Rs. 412-8 as the sum justly due to him after making all proper deductions, including as well as the share of the rent of the forty-four bighas to which the six annas shareholders were entitled to retain as proprietors of a one anna share. *Held* that the facts showed an implied contract on the part of B and his family to pay to their co-shareholders whatever, upon taking an account, should appear to be due to them; and that, inasmuch as the total amount sought to be recovered in the suit by A did not exceed 500 rupees, the suit was one which

might have been brought in a Small Cause Court, and therefore the plaintiff had no right of second appeal to the High Court under s. 586 of the Code of Civil Procedure.—*Asman Singh v. Doorga Roy*, I. L. R., 6 Cal. 284.

THE jurisdiction of a Small Cause Court is not ousted in a suit for damages for carrying away the produce of certain land when the defendant sets up title to the land in answer to the claim. S. 586 of the Code of Civil Procedure precludes a second appeal in a suit for damages under Rs. 500, although the suit has been instituted in the District Munsif's Court and not in a Court of Small Causes, and although a question of title has been raised by the defendant and decided. *Per* Turner, C.J.—When a suit is brought in a form in which it is cognizable by a Small Cause Court under Act XI. of 1865, the Court cannot decline jurisdiction if it appears that incidentally a question of title is raised which it has not jurisdiction to determine for any other purpose than the decision of the suit before it. Under such circumstances the Court may, however, properly grant a reasonable adjournment that the question may be litigated and determined by the proper tribunal. *Per* Muthisami Ayyár, J.—The question, what is a suit of the nature cognizable in Courts of Small Causes within the meaning of s. 586 of the Civil Procedure Code, has reference to the mode of adjudication and not to the *forum*, and the fact that the suit is instituted in the District Munsif's Court and not in a Court of summary jurisdiction makes no difference for the purposes of that section. If the matter adjudicated on in a suit is only incidentally in issue or cognizable, the adjudication is final, whether by a Court of concurrent or limited jurisdiction, only for the purpose and object of that suit. *Per* Innes J.—The decree of a Small Cause Court in a case where a question of title is raised incidentally is no bar to a suit upon the title under s. 13, expl. 2, of the Civil Procedure Code, because the Small Cause Court is not competent to pass a decree upon the title.—*Manappa Mudali (Plaintiff), Appellant, v. S. T. McCarthy (First Defendant), Respondent*, I. L. R., 3 Mad. 192.

587. The provisions contained in Chapter XLI. shall apply, as far as may be, to appeals under this chapter, and to the execution of decrees passed in such appeals.

CHAPTER XLIII.

OF APPEALS FROM ORDERS.

Orders appealable.

588. An appeal shall lie from the following orders under this Code, and from no other such orders:—

- (1) orders under section 20, staying proceedings in a suit;
- (2) orders under section 32, striking out or adding the name of any person as plaintiff or defendant;
- (3) orders under section 36 or section 66, directing that a party shall appear in person;
- (4) orders under section 44, adding a cause of action;
- (5) orders under section 47, excluding a cause of action;
- (6) orders returning plaints for amendment or to be presented to the proper Court;
- (7) orders under section 111, setting-off, or refusing to set-off, one debt against another;
- (8) orders rejecting applications under section 103 (in cases open to appeal), for an order to set aside the dismissal of a suit;
- (9) orders rejecting applications under section 108 (or an order to set aside a decree *ex parte*);
- (10) orders under sections 113, 120, and 177;

(11) orders under section 116 or section 245, rejecting, or returning for amendment, written statements or applications for execution of decrees ;

(12) orders under sections 143 and 145, directing anything to be impounded ;

(13) orders under section 162, for the attachment and sale of moveable property ;

(14) orders under section 168 for attachment of property, and orders under section 170 for the sale of attached property ;

(15) orders under section 261, as to objections to draft-conveyances or draft-endorsements ;

(16) orders under section 294, ^{and under section} (the first paragraph of) section 312, or section 313, for confirming, or setting aside, or refusing to set aside, a sale of immoveable property ;

(17) orders in insolvency-matters, under section 351, section 352, section 353, or section 357 ;

(18) orders under section 366, paragraph two, section 367, or section 368 ;

(19) orders rejecting applications under section 370 for dismissal of a suit ;

(20) orders under section 371, refusing to set aside the abatement or dismissal of a suit ;

(21) orders disallowing objections, under section 372 ;

(22) orders under section 454, section 455, or section 458, directing a next friend or guardian for the suit to pay costs ;

(23) orders in interpleader-suits under section 473, clause (a), (b), or (d), section 475, or section 476 ;

(24) orders under section 479, section 480, section 485, section 492, section 493, section 496, section 497, section 502, or section 503 ;

(25) orders under section 514, superseding an arbitration ;

(26) orders under section 518, modifying an award ;

(27) orders of refusal under section 558 to re-admit, or under section 560 to re-hear, an appeal ;

(28) orders under section 562, remanding a case ;

(29) orders under any of the provisions of this Code, imposing fines, or for the arrest or imprisonment of any person, except when such imprisonment is in execution of a decree.

The orders passed in appeals under this section shall be final.

AN APPEAL lies against an order rejecting a plaint on the ground of its being insufficiently stamped.—*Ajoodhya Pershad v. Gunga Pershad*, I. L. R., 6 Cal. 249.

AN ORDER refusing an application, under s. 32 of Act X. of 1877, by a person to be added as a defendant in a suit, is not appealable.—*Karman Bibi and others (Petitioners) v. Misri Lall (Plaintiff)*, I. L. R., 2 All. 904.

WHERE an appeal is dismissed, under s. 556 of Act X. of 1877, for the appellant's default, the order dismissing it is not appealable.—*Nand Ram and others (Defendants) v. Muhammad Bakhsh (Plaintiff)*, I. L. R., 2 All. 616.

WHERE a suit has been referred to arbitration by an order of Court, and the Court afterwards gives judgment according to the award made upon such reference, such judgment is final, and no appeal lies therefrom.—1 Hay 366 (*Marshall* 163), 14 W. R. 33, 17 W. R. 30, (P.C.) 23 W. R. 429. See 15 W. R., F. B., 9.

ALTHOUGH the auction-purchaser may not apply under Act X. of 1877, s. 311, to have a sale set aside, he may be a party to the proceedings after an application has been made under that section, and then, if an order is made against him, he can appeal from such order under s. 588.—*Kanthi Ram v. Bankey Lal*, I. L. R., 2 All. 396.

A PERSON applying under Act X. of 1877, s. 344, must satisfy the Court that his case comes within the provisions of s. 351, and the burden of proof lies upon him. An order dismissing such an application is appealable under s. 588.—*Mumtaz Hossein v. Brij Mohun Thakoor*, I. L. R., 4 Cal. 888. Followed in I. L. R., 6 Cal. 168.

AN ORDER made by a lower Court, directing a suit to be re-admitted and registered on the file of the Court, is not appealable. Second appeals to the High Court must either come within chap. xlii. or ss. 588 and 591 of Act X. of 1877.—*Hirdhamun Jha and others (Defendants) v. Jinghoor Jha and others (Plaintiffs)*, I. L. R., 5 Cal. 711.

AN ORDER refusing to grant an application to be made an insolvent is appealable under cl. 17, s. 588 of the Code of Civil Procedure; such an order must be considered to be one made under s. 351. *Juggutjeebun Gooptoo v. Harocoomar Pal* (I. L. R., 5 Cal. 719) dissented from.—*Nabi Bakhsh (Judgment-debtor) v. Chasni (Decree-holder)*, I. L. R., 6 Cal. 168.

THERE is no appeal from an order made under Act X. of 1877, s. 351, refusing to grant an application to be made an insolvent. The appeal allowed under s. 588, cl. 17, so far as an order under s. 351 is concerned, is on behalf of the judgment-creditor only.—*Juggutjeebun Gooptoo v. Haro Coomar Pal*, I. L. R., 5 Cal. 719. Dissented from in I. L. R., 6 Cal. 168.

MATTERS in dispute were referred to arbitration without the intervention of the Court. An award was made, and upon an application under s. 525 of the Civil Procedure Code to file the award, one of the parties showed cause why the award should not be filed, and the Subordinate Judge held the objection to be good. *Held* that no appeal lay.—*Sree Ram Chaudhry (Petitioner) v. Denobundhoo Chaudhry (Opposite Party)*, I. L. R., 7 Cal. 490.

AN order on appeal from a decree in an original suit of the nature cognizable in Mufassal Courts of Small Causes, under s. 562 of Act X. of 1877, remanding the suit for re-trial, is appealable, s. 586 of Act X. of 1877 notwithstanding, as that section applies to appeals from appellate decrees, and not to appeals from orders.—*The Collector of Bijnor, Manager of the estate of Claudhri Ranjit Singh, a Minor (Defendant), v. Jafar Ali Khan (Plaintiff)*, I. L. R., 3 All. 18.

WHERE, in a suit for the filing of an award made on a private reference to arbitration, the Court of first instance, holding that there was no reason to remit such award to the re-consideration of the arbitrator, under the provisions of s. 520 of Act X. of 1877, or to set it aside under s. 521 of that Act, did not proceed to give judgment according to such award followed by a decree, but merely directed that such award should be filed: *Held* that its order was not appealable as a decree, or as an order.—*Ramadhin and another (Defendants) v. Mahesh and another (Plaintiffs)*, I. L. R., 2 All. 471.

A DECISION of a Judge directing a penalty to be enforced under the Stamp Act, the case being afterwards proceeded with, is not appealable as a decree, as it cannot be said to be a decree affecting the merits of the case or the jurisdiction of the Court. Nor can such a decision be said to be "an order as to a fine" within the meaning of Act VIII. of 1859, s. 365 (corresponding with Act X. of 1877, s. 588, cl. 29), which is not intended to apply to penalties under the Stamp Act, but only to fines which may be levied under the Code itself.—*Sonaka Chowdrain v. Bhobunjoy Shaha*, I. L. R., 5 Cal. 311.

AN order for attachment and sale of property in execution of a decree is an order "of the same nature with" an order made in the course of a suit for attachment of the debtor's property. The latter order is appealable under s. 588, cl. 7, of the Code of Civil Procedure. It follows that an order for attachment and sale in

execution of a decree is (according to the requirement of s. 588, cl. f) "of the same nature with appealable orders made in the course of a suit," and therefore is appealable under that section.—*Palakdhari Rai and others (Judgment-debtors) v. Radha Persad Singh (Decree-holder)*, I. L. R., 8 Cal. 28.

AN Appellate Court rejected the application of the legal representative of a deceased sole plaintiff-appellant to enter his name in the place of such appellant on the record, on the ground that such application had not been made within the time limited by law, and passed an order that the suit should abate. *Held* that the order of the Appellate Court, passed under the first paragraph of s. 366 of Act X. of 1877, not being appealable under cl. 18, s. 588, of that Act, nor being a decree within the terms of s. 2, from which a second appeal would lie, was not appealable.—*Ahmad Ata (Plaintiff) v. Mata Badal Lal (Defendant)*, I. L. R., 3 All. 844.

AN ORDER made by a Subordinate Judge, dismissing an application under s. 503 for the appointment of a receiver in a suit pending before him, or declining to nominate a receiver, is an order under that section, and not under s. 505, and is therefore appealable under s. 588 of the Civil Procedure Code, as amended by Act XII. of 1879. A Subordinate Judge, if he has good grounds, may decline to appoint a receiver even after he has received the necessary authority from the District Judge under s. 505 to do so.—*Goossain Dulmir Puri (Plaintiff), Appellant, v. Tekait Hetnara and others (Defendants), Respondents*, I. L. R., 6 Cal. Law Rep. 467.

A DECREE-HOLDER, having assigned a share of her decree, applied several times jointly with such assignee for execution. On a subsequent application made by the original decree-holder alone, the Court, while granting the application, directed that the proceeds arising from such execution only should be paid over to the co-decree-holders jointly. *Held* that the question in dispute being one between co-decree-holders, and not between the parties to the suit or their representatives as contemplated by art. c, s. 244 of the Civil Procedure Code, no appeal would lie from such order.—*Gymonee (Decree-holder) v. Radha Romon (Objector)*, I. L. R., 5 Cal. 592.

WHERE an application was made for the issue of execution of decree, and the District Munsif made an order refusing execution, the decree being one passed not in a regular suit, and governed by the one-year limitation; and the Subordinate Judge on appeal reversed the Munsif's order, applying the three years' limitation: *Held* by the High Court that, as Act X. of 1877, s. 588, provided that orders passed in appeal from orders under s. 244 should be final, no second appeal lay; and that the High Court could not interfere under s. 622, as the Subordinate Judge had jurisdiction to hear the appeal.—*Suryaprakasa Ráu v. Vaisya Sanniási Ráu*, I. L. R., 7 Mad. 401.

ON THE 25th June, 1879, a Subordinate Judge made an order setting aside the sale of immoveable property in the execution of a decree, from which an appeal was preferred, under Act X. of 1877, to the District Court on the 25th July, 1879, before Act XII. of 1879 came into force. *Held* that, as the appeal would not have lain at all, had Act XII. of 1879 been in force on the date of its institution, s. 102 of that Act did not apply, but as the appeal lay to the District Court under the law in force on that date, it was competent to dispose of it under the provisions of s. 6 of Act I. of 1868.—*Durga Pershad (Decree-holder) v. Ram Charan and another (Judgment-debtors)*, I. L. R., 2 All. 785.

ALTHOUGH Act X. of 1877, s. 57, contemplates the return of the plaint, should error be patent when it is first presented, yet there is nothing in the wording of that section which forbids the return of the plaint at a later stage in the suit. Where, therefore, after the issues in a suit were framed, the Court decided that it had no jurisdiction, and returned the plaint to be presented in the proper Court: *Held* that in so doing the Court acted under s. 57: and its decision, not coming within the definition of a "decree" in Act XII. of 1879, s. 2, was not appealable as such, but was appealable under Act X. of 1877, s. 588, as an order.—*Abdul Samad v. Rajendra Kishor Singh*, I. L. R., 2 All. 357.

A SUIT to redeem a usufructuary mortgage of certain lands was instituted in the Munsif's Court. After the suit had been admitted, and the parties called on to produce evidence, the Munsif ordered the plaint in the suit to be returned to the plaintiff for presentation in the proper Court on the ground that the suit should have

been instituted in the Court of the Subordinate Judge, the value of the property in suit being beyond the jurisdiction of a Munsif : *Held* that, under Act VIII. of 1859, the Munsif's order was appealable to the lower Appellate Court, and under Act X. of 1877, the lower Appellate Court's order to the High Court.—*Kalian Dass and others (Plaintiffs) v. Nawal Singh and others (Defendants)*, I. L. R., 1 All. 620.

By a decree in an administration-suit, A was appointed receiver "to manage the estate." A died, and by a subsequent order B was appointed receiver. One of the defendants in the suit applied to have B removed from the office of receiver on the ground of his alleged mismanagement of the estate. The application was refused. *Held* that the order of refusal was appealable, whether the former Code or the present Code of Civil Procedure was deemed to be applicable, being an order made in respect of a question arising between the parties to a suit relating to the execution of the decree.—*Mithibai (Plaintiff) v. Linji Nowroji Banaji and others (Defendants)*; *Harrivullubhdas Calliandás (Original Defendant), Appellant, v. Ardasar Framji Moos (Receiver and Respondent)*, I. L. R., 5 Bom. 45.

THE Court of first instance made an order returning the plaint in a suit to be presented to the proper Court, on the ground that it was not competent to try such suit. On appeal from such order, the Appellate Court, holding that the Court of first instance was competent to try such suit, made an order "decreeing the appeal." It subsequently made an additional order directing that the case "should be returned for re-trial." On appeal to the High Court from such additional order, *held* that the appeal would not lie, as it was in reality one from an order passed in appeal from an order returning a plaint, which, under the last clause of s. 588 of Act X. of 1877, was final, and not an appeal from an order remanding a case under s. 562, the character of the original order of the Appellate Court not being altered by the passing of the additional order.—*Krishna Ram (Defendant) v. Nursingh Sevak Singh and others (Plaintiffs)*, I. L. R., 3 All. 855.

A SUIT was instituted in September, 1877, when Act VIII. of 1859 was in operation, and a decree was passed on the 2nd February, 1878, after the repeal of that Act. An appeal was preferred, but, on coming on for hearing, was dismissed for default, on the 31st of May, neither the appellants nor their pleader having appeared. On the 21st June, the appellants applied, under s. 558 of Act X. of 1877, to have the appeal restored, on the ground that the pleader whom they had engaged was a lunatic, and that, having engaged a pleader, they had thought it unnecessary to appear in person. The Judge rejected the application, and the applicants now appealed against the order rejecting this application. *Held* that the order of the 21st of June was made under Act X. of 1877, and was therefore open to appeal under s. 588 of that Act. *Ranjit Singh v. Meharban Koer* (2 C. L. R. 391) and *Burkut Hoosen v. Majidoon Nissa* (3 C. L. R. 208) cited and distinguished.—*Shaik Elahee Bakhsh and others (Plaintiffs), Appellants, v. Musammam Morachoo and others (Defendants), Respondents*, I. L. R., 3 Cal. Law Rep. 593.

THE lower Appellate Court (Subordinate Judge) decided on appeal by the defendants from the decree of the Court of first instance (Munsif) that the Court of first instance had no jurisdiction to entertain the suit, as the value of the subject-matter of the suit exceeded the pecuniary limits of its jurisdiction; and ordered that "the appellant's appeal be decreed, the decision of the Munsif be reversed, and the record of the case be sent to the Munsif to return the plaint to the plaintiff for presentation to the proper Court." The plaintiff appealed to the High Court from such order as an order returning a plaint to be presented to the proper Court. *Held* that such order could not be regarded as one to which art. 6 of s. 588 of Act X. of 1877 was applicable. That relates to orders returning plaints for amendment or to be presented to the proper Court passed by a Court of first instance, and to an order by an Appellate Court upon an appeal to it from the decree of a Court of first instance on general grounds. The plaintiff's proper course was to have preferred a second appeal.—*Bindeshri Chaubey and others (Plaintiffs) v. Nandu (Defendant)*, I. L. R., 3 All. 456.

AN ALLOTTEE, under a private partition, sued to stay subsequent partition-proceedings brought under Reg. XIX. of 1814, and to have his possession confirmed. The defendants objected to the valuation of the suit, and to the suit being heard by the Civil Courts, no proceedings having first been instituted before the Revenue

Authorities. *Held* that such a suit should be considered to be one for a declaratory decree, or for something in the nature of an injunction, and that, therefore, the plaint should not be stamped according to the value of the entire estate. That the question, whether the Collector would have brought the lands to partition, depended upon whether they were held "in common tenancy;" if they were not so held, the Collector would be only competent to make an assignment of the revenue in proportion to the several portions of the land held by the shareholders. That a private partition is no bar to proceedings in the Revenue Courts under s. 30 of Reg. XIX. of 1814. A Munsif dismissed a suit, on the ground that, if it had been properly valued, it would not have come within his jurisdiction. The District Judge affirmed the Munsif's judgment, and directed the plaint to be returned for presentation to the proper Court under s. 57 of the Civil Procedure Code. This was not done. *Held* that a second appeal would lie. *Ajoodhia Lall v. Guman Lall* (2 C. L. R. 134) approved. *Ajoodhya Pershad v. Kristo Dyal* (15 W. R. 165) dissented from.—*Joy-nath Roy (Plaintiff) v. Lall Bahadoor Singh and others (Defendants)* I. L. R., 8 Cal. 126.

What Courts to hear appeals.

589. An appeal from any order specified in section 588, clauses (15), (16), and (17), shall lie to the High Court.

When an appeal from any (other) order is allowed by this chapter, it shall lie to the Court to which an appeal would lie from the decree in the suit in relation to which such order was made, or, when such order is passed by a Court (not being a High Court) in the exercise of appellate jurisdiction, then to the High Court.

An order on appeal from a decree in an original suit of the nature cognizable in Mufassal Courts of Small Causes, under s. 562 of Act X. of 1877, remanding the suit for re-trial, is appealable, s. 586 of Act X. of 1877 notwithstanding, as that section applies to appeals from appellate decrees, and not to appeals from orders.—*The Collector of Bijnor, Manager of the estate of Chaudhri Ranjit Singh, a Minor (Defendant), v. Jafar Ali Khan (Plaintiff)*, I. L. R., 3 All. 18.

590. The procedure prescribed in Chapter XLI. shall, so far as may be, apply to appeals from orders under this Code, or under any special or local law in which a different procedure is not provided.

591. Except as provided in this chapter, no appeal shall lie from any order passed by any Court in the exercise of its original or appellate jurisdiction; but if any decree be appealed against, any error, defect, or irregularity in any such order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

No other appeal from orders; but error therein may be set forth in memorandum of appeal against decree.

AN ORDER made by a lower Court, directing a suit to be re-admitted and registered on the file of the Court, is not appealable. Second appeals to the High Court must either come within Act X. of 1877, chap. xlii., or ss. 588 and 591.—*Hirdhamun Jha v. Jinghoor Jha*, I. L. R., 5 Cal. 711.

IN A suit for rent, where the defendant alleged that a person not on the record had a joint interest with the plaintiff in the property in respect of which the rent was due: *Held*, where the plaintiff disputed this, and objected to such course being taken, that it was improper to add such person as co-plaintiff, and that, if added at all, it should be as defendant, in order that the issue between him and the plaintiff might be properly tried.—*Held* also that in such a case an appeal lies under s. 591 of the Civil Procedure Code.—*Googlee Sahoo v. Premalal Sahoo*, I. L. R., 7 Cal. 148.

CHAPTER XLIV.

OF PAUPER APPEALS.

592. Any person entitled under this Code or any other law to pre-
 Who may appeal as pau- fer an appeal, who is unable to pay the fee
 per. required for the petition of appeal, may, on pre-
 senting an application accompanied by a memorandum of appeal, be
 allowed to appeal as a pauper, subject to the rules contained in Chap-
 ters XXVI., XLI., XLII., and XLIII., in so far as those rules are
 applicable :

Provided that the Court shall reject the application, unless, upon
 Procedure on application a perusal thereof, and of the judgment and de-
 for admission of appeal. cree against which the appeal is made, it sees
 reason to think that the decree appealed against is contrary to law or
 to some usage having the force of law, or is otherwise erroneous or
 unjust.

No APPEAL lies under Act X. of 1877 from an order made under that Act reject-
 ing an application for permission to sue as a pauper.—I. L. R., 1 All. 745 (F. B.).

AN application for permission to appeal as a pauper was presented, not by the
 applicant personally, but by his pleader, and was on that ground rejected. *Held*,
 on an application to the High Court for revision, that s. 622 of Act X. of 1877 did
 not apply to a proceeding of so purely an interlocutory a character as mentioned
 in s. 592, and such application therefore could not be entertained.—*Harsaran Singh*
 (Plaintiff) v. Muhammad Raza and others (Defendants), I. L. R., 4 All. 91.

593. The inquiry into the pauperism of the applicant may be made
 Inquiry into pauperism. either by the Appellate Court or by the Court
 against whose decision the appeal is made un-
 der the orders of the Appellate Court :

Provided that, if the applicant was allowed to sue or appeal as a
 Proviso. pauper in the Court against whose decree the
 appeal is made, no further inquiry in respect
 of his pauperism shall be necessary, unless the Appellate Court sees
 special cause to direct such inquiry.

CHAPTER XLV.

OF APPEALS TO THE QUEEN IN COUNCIL.

594. In this chapter, unless there be something repugnant in the
 subject or context, the expression 'decree' in-
 'Decree' defined. cludes also judgment and order.

HELD that the High Court has not any power, under Act X. of 1877, or cl. 31 of
 the Letters Patent, to grant leave to appeal to Her Majesty in Council from an order
 of the Court remanding a suit for re-trial. The provisions of cl. 31 of the Letters
 Patent are repealed by the Code, and Act VI. of 1874 which preceded it.—*Talley*
 (Judgment-debtor) v. Jaishankar and another (Defendants), I. L. R., 1 All. 726.

595. Subject to such rules as may, from time to time, be made by
 When appeals lie to Queen Her Majesty in Council regarding appeals from
 in Council. the Courts of British India, and to the provi-
 sions hereinafter contained,

an appeal shall lie to Her Majesty in Council—

(a) from any final decree passed on appeal by a High Court or any other Court of final appellate jurisdiction ;

(b) from any final decree passed by a High Court in the exercise of original civil jurisdiction, and

(c) from any decree, when the case, as hereinafter provided, is certified to be a fit one for appeal to Her Majesty in Council.

THE High Court has not any power, under Act X. of 1877, or cl. 31 of the Letters Patent (which is repealed by Acts VI. of 1874 and X. of 1877), to grant leave to appeal to the Privy Council from an order of the Court remanding a suit for re-trial.—*Talley (Judgment-debtor v. Jaishankar and another (Defendants), I. L. R., 1 All. 726.*

AN ORDER of the High Court directing execution to proceed is not a "final" decree, judgment, or order within the meaning of cl. a, s. 595 of the Code of Civil Procedure, Act X. of 1877.—*Jogessur Sabal and others (Judgment-debtors) v. Musammat Muracho Kooer, under the Court of Wards (Decree-holder), I. L. R., 1 Cal. Law Rep. 354.*

THE District Judge of Gházipur re-called to his own file the proceedings in the execution of a decree which were pending in the Court of the Subordinate Judge of Shahabad, and disallowed an application for the execution of the decree which had been preferred to that Judge. The High Court, on appeal from the order of the District Judge, annulled his order as void for want of jurisdiction, and remitted the case in order that the application might be disposed of on its merits, directing that the record of the case should be returned to the Subordinate Judge of Shahabad. On an application for leave to appeal to Her Majesty in Council from the order of the High Court : *Held* that such order was in the nature of an interlocutory order, and was not one from which the High Court could or ought to grant leave to appeal to Her Majesty in Council.—*Palak Dhari Roy and others (Judgment-debtors) v. Radha Pershad Singh (Decree-holder), I. L. R., 2 All. 65.*

Value of subject-matter.

596. In each of the cases mentioned in clauses (a) and (b) of section 595,

the amount or value of the subject-matter of the suit in the Court of first instance must be ten thousand rupees or upwards, and the amount or value of the matter in dispute on appeal to Her Majesty in Council must be the same sum or upwards,

or the decree must involve, directly or indirectly, some claim or question to, or respecting, property of like amount or value,

and where the decree appealed from affirms the decision of the Court immediately below the Court passing such decree, the appeal must involve some substantial question of law.

A AND B purchased the same properties, deriving the title through different persons. The value of the properties with mesne-profits was over Rs. 10,000. B granted two patni-leases of the properties to different persons. A was, therefore, obliged to bring two suits for the recovery of the properties, and the value of the subject-matter in each suit was less than Rs. 10,000. *Held* that an appeal would lie to the Privy Council.—*Joogul Kishore (Plaintiff) v. Jotendro Mohun Tagore (Defendant), I. L. R., 8 Cal. 210.*

Bar of certain appeals.

597. Notwithstanding anything contained in section 595,

no appeal shall lie to Her Majesty in Council from the judgment of one Judge of a High Court established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, or of one Judge of a Division Court, or of two or more Judges of such High Court, or of a Division

Court constituted by two or more Judges of such High Court, wherever such Judges are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges of the High Court at the time being;

and no appeal shall lie to Her Majesty in Council from any decree which, under section 586, is final.

598. Whoever desires to appeal under this chapter to Her Majesty
Application to Court whose decree complained of. in Council must apply by petition to the Court
whose decree is complained of.

Time within which application must be made.

599. Such application must ordinarily be made within six months from the date of such decree.

But if that period expires when the Court is closed, the application may be made on the day that the Court re-opens.

600. Every petition under section 598 must state the grounds of
Certificate as to value or fitness. appeal, and pray for a certificate, either that, as regards amount or value and nature, the case fulfils the requirements of section 596, or that it is otherwise a fit one for appeal to Her Majesty in Council.

Upon receipt of such petition, the Court may direct notice to be served on the opposite party to show cause why the said certificate should not be granted.

Effect of refusal of certificate.

601. If such certificate be refused, the petition shall be dismissed :

Provided that, if the decree complained of be a final decree passed by a Court other than a High Court, the order refusing the certificate shall be appealable, ~~within thirty days from the date of the order,~~ to the High Court, to which the former Court is subordinate.

602. If the certificate be granted, the applicant shall, within six
Security and deposit required on grant of certificate. months from the date of the decree complained of, or within six weeks from the grant of the certificate, whichever is the later date,

(a) give security for the costs of the respondent, and
 (b) deposit the amount required to defray the expense of translating, transcribing, indexing, and transmitting to Her Majesty in Council a correct copy of the whole record of the suit, except

(1) formal documents directed to be excluded by any order of Her Majesty in Council in force for the time being ;

(2) papers which the parties agree to exclude ;

(3) accounts, or portions of accounts, which the officer empowered by the Court for that purpose considers unnecessary, and which the parties have not specifically asked to be included, and

(4) such other documents as the High Court may direct to be excluded :

and when the applicant prefers to print in India the copy of the record, except as aforesaid, he shall also, within the time mentioned in the first clause of this section, deposit the amount required to defray the expense of printing such copy.

603. When such security has been completed and deposit made to the satisfaction of the Court, the Court may
Admission of appeal and procedure thereon.

- (a) declare the appeal admitted, and
- (b) give notice thereof to the respondent, and shall then
- (c) transmit to Her Majesty in Council, under the seal of the Court, a correct copy of the said record, except as aforesaid, and
- (d) give to either party one or more authenticated copies of any of the papers in the suit on his applying therefor and paying the reasonable expenses incurred in preparing them.

604. At any time before the admission of the appeal, the Court may, upon cause shown, revoke the acceptance of any such security, and make further directions thereon.
Revocation of acceptance of security.

605. If at any time after the admission of the appeal, but before the transmission of the copy of the record, except as aforesaid, to Her Majesty in Council, such security appears inadequate,
Power to order further security or payment.

or further payment is required for the purpose of translating, transcribing, printing, indexing, or transmitting the copy of the record, except as aforesaid,

the Court may order the appellant to furnish, within a time to be fixed by the Court, other and sufficient security, or to make, within like time, the required payment.

606. If the appellant fail to comply with such order, the proceedings shall be stayed,
Effect of failure to comply with order.

and the appeal shall not proceed without an order in this behalf of Her Majesty in Council,

and in the meantime execution of the decree appealed against shall not be stayed.

607. When the copy of the record, except as aforesaid, has been transmitted to Her Majesty in Council, the appellant may obtain a refund of the balance, (if any) of the amount which he has deposited under section 602.
Refund of balance of deposit.

608. Notwithstanding the admission of any appeal under this chapter, the decree appealed against shall be unconditionally enforced, unless the Court admitting the appeal otherwise directs.
Powers of Court pending appeal.

But the Court may, if it thinks fit, on any special cause shown by any party interested in the suit, or otherwise appearing to the Court,

- (a) impound any moveable property in dispute or any part thereof, or
- (b) allow the decree appealed against to be enforced, taking such security from the respondent as the Court thinks fit for the due performance of any order which Her Majesty in Council may make on the appeal, or

(c) stay the execution of the decree appealed against, taking such security from the appellant as the Court thinks fit for the due performance of the decree appealed against, or of any order which Her Majesty in Council may make on the appeal, or

(d) place any party seeking the assistance of the Court under such conditions, or give such other direction respecting the subject-matter of the appeal, as it thinks fit.

THREE different plaintiffs, claiming through the same original title to be the owner of a certain mahál, sued the same defendant in separate suits for possession and for the mesne-profits of their respective shares. The defence raised being the same in each case, the suits were heard together, the result being that in both the lower Courts and in the High Court the plaintiffs obtained a decree for their claims. The aggregate value of the three suits amounted to more than Rs. 10,000, though the value of each suit was under that sum. The defendant applied to be allowed to appeal in each case to Her Majesty in Council. *Held* that he was entitled to have each of the three cases admitted under the second clause of s. 596 of Act X. of 1877, as the decree in each case involved indirectly a question of title to property of the amount or value of Rs. 10,000. The Court has power under s. 608 to stay execution of a decree of the High Court in a suit subsequently appealed to Her Majesty in Council. *Quere*.—Whether the Court has power to order restitution of possession of property already taken in execution of its own decree pending an appeal to the Privy Council.—*Khaja Ashan-ul-lah (Appellant) v. Karoona Moyi Chaudhri (Respondent)*; *Rohani Chandhrain (Appellant) v. Kishen Gobind Dass (Respondent)*, I. L. R., 4 Cal. Law Rep. 125.

609. If, at any time during the pendency of the appeal, the security

Increase of security found so furnished by either party appears inadequate, the Court may, on the application of the other party, require further security.

In default of such further security being furnished as required by the Court, if the original security was furnished by the appellant, the Court may, on the application of the respondent, issue execution of the decree appealed against as if the appellant had furnished no such security.

And if the original security was furnished by the respondent, the Court shall, so far as may be practicable, stay all further execution of the decree, and restore the parties to the position in which they respectively were when the security which appears inadequate was furnished, or give such direction respecting the subject-matter of the appeal as it thinks fit.

610. Whichever desires to enforce or to obtain execution of any

Procedure to enforce order of Her Majesty in Council shall apply orders of Queen in Council. by petition, accompanied by a certified copy of the decree or order made in appeal and sought to be enforced or executed, to the Court from which the appeal to Her Majesty was preferred.

Such Court shall transmit the order of Her Majesty to the Court which made the first decree appealed from, or to such other Court as Her Majesty by her said order may direct, and shall (upon the application of either party) give such directions as may be required for the enforcement or execution of the same; and the Court to which the said order is so transmitted shall enforce or execute it accordingly, in the manner and according to the rules applicable to the execution of its original decrees.

When any moneys expressed to be payable in British currency are payable in India under such order, the amount so payable shall be estimated according to the rate of exchange for the time being fixed by the Secretary of State for India in Council, with the concurrence of

the Lords Commissioners of Her Majesty's Treasury, for the adjustment of financial transactions between the Imperial and the Indian Governments.

BEFORE a decree-holder in the District Court can obtain execution of a decree which has been affirmed by the Privy Council, he must produce, on the application for execution, a certified copy of the order passed by Her Majesty in Council.—*Juggernath Sahoo v. Judoo Roy Singh*, I. L. R., 5 Cal. 329.

AN appeal was preferred to the Privy Council from a final decree passed upon appeal by the High Court, and B and certain other persons on behalf of the appellant gave security for the costs of the respondent. The Privy Council dismissed the appeal, and ordered the appellant to pay the costs of the respondent. The respondent applied to the Court of first instance for the execution of that order against B and the other persons as sureties. *Held* that under Act X. of 1877, ss. 610 and 253, such order could be executed against the sureties.—*Bans Bahadur Singh v. Mughla Begam*, I. L. R., 2 All. 604 (F. B.).

A DECREE obtained on appeal by certain defendants in the High Court was appealed to the Privy Council by one only of the two plaintiffs to the suit, and the decision of the High Court was reversed; the plaintiff who had appealed assigned her share in the order of the Privy Council to one of the defendants, and delivered him the certified copy of the decree made in the Privy Council. The plaintiff who had not appealed to the Privy Council applied to the High Court for leave to transmit the order to the Court of first instance for execution of the share decreed to him, but, on account of the assignment above-mentioned, was unable to produce the certified copy of the decree of the Privy Council. The Judge presiding over the Privy Council Department in the High Court held that the production of a certified copy of the order of the Privy Council was excusable under the circumstances, but refused the application, on the ground that the decree of the Court of first instance, which was affirmed by the Privy Council, could only be executed as a whole, and not partly by one of the plaintiffs. *Held* on appeal *per* Garth, C.J.—That the duties of a Judge in dealing with the meaning of decrees of the Privy Council are purely ministerial, and that any order made in such ministerial capacity could not be considered a judgment, and could not, therefore, be made the subject of an appeal to a Bench of the High Court under s. 15 of the Charter. *Per* White and Mitter, J.J.—An order of a Judge presiding over the Privy Council Department in the High Court, rejecting an application for execution, is a final order, and is a judgment within the meaning of s. 15 of the Charter, and is therefore appealable.—In the matter of the petition of Kally Soondery Dabia. *Kally Soondery Dabia v. Hurrish Chunder Chowdhry*, I. L. R., 6 Cal. 594.

611. The orders made by the Court which enforces or executes the

Appeal against order re- order of Her Majesty in Council, relating to
lating to execution. such enforcement or execution, shall be appeal-
able in the same manner and subject to the same rules as the orders of
such Court relating to the enforcement or execution of its own decrees,

Power to make rules.

612. The High Court may, from time to time, make rules consistent with this Act to regulate—

- (a) the service of notices under section 600;
- (b) the grant or refusal of certificates, under sections 601 and 602,
- by Courts of final appellate jurisdiction subordinate to the High Court;
- (c) the amount and nature of the security required under sections 602, 605, and 609;
- (d) the testing of such security;
- (e) the estimate of the cost of transcribing the record;
- (f) the preparation, examination, and certifying of such transcript;
- (g) the revision and authentication of translations;

(h) the preparation of indices to transcripts of records, and of lists of the papers not included therein ;

(i) the recovery of costs incurred in British India in connection with appeals to Her Majesty in Council, and all other matters connected with the enforcement of this chapter.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law in the High Court and the Courts of final appellate jurisdiction subordinate thereto.

Publication of rules.

613. All rules heretofore made and published by any High Court relating to appeal to Her Majesty in Council, and in force immediately before the passing of this Act, shall, so far as they are consistent with this Act, be deemed to have been made and published hereunder.

Legalization of existing rules

614. In sections 595 and 612, the expression ' High Court ' shall be deemed to include also the Recorder of Rangoon, but not so as to empower him to make rules binding on Courts other than his own Court.

Recorder of Rangoon.

615. The rules and restrictions referred to in Bengal Regulation III. of 1828, section IV, clause *fifth*, shall be deemed to be the rules and restrictions applicable to appeals under this Code from the decisions of the High Court of Judicature at Fort William in Bengal.

Construction of Bengal Regulation III. of 1828, section 4, clause 5.

Saving of Her Majesty's pleasure,

616. Nothing herein contained shall be understood—

(a) to bar the full and unqualified exercise of Her Majesty's pleasure in receiving or rejecting appeals to Her Majesty in Council, or otherwise howsoever, or

(b) to interfere with any rules made by the Judicial Committee of the Privy Council, and for the time being in force, for the presentation of appeals to Her Majesty in Council or their conduct before the said Judicial Committee, and of rules for conduct of business before Judicial Committee.

And nothing in this chapter applies to any matter of criminal or admiralty or vice-admiralty jurisdiction, or to appeals from orders and decrees of Prize-Courts.

PART VII.

CHAPTER XLVI.

OF REFERENCE TO AND REVISION BY THE HIGH COURT.

617. If, before or on the hearing of a suit or an appeal in which the decree is final, or if, in the execution of any such decree, any question of law or usage having the force of law, or the construction of a document, which construction may affect the merits, arises, on which the Court trying the suit

Reference of question to High Court.

or appeal, or executing the decree, entertains reasonable doubt, the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court.

THE above section applies to M. S. C. C. and P. S. C. C.

WHERE A, under the terms of a will, although not expressly appointed an executor, was directed to receive and pay the testator's debts, and to get in and distribute his personal estate : *Held* that A must be taken to have been appointed under the will an executor by implication. In the goods of Baylis (L. R. 1 P. M. 21) followed. The order made by a District Judge on an application for probate, not being a final order, cannot be referred for the opinion of the High Court under s. 617 of the Code of Civil Procedure. But the Court will, under certain circumstances, entertain such an application, as a Court of concurrent jurisdiction, under s. 264 of the Indian Succession Act.—In the matter of Manohar Mukarjee (Petitioner), I. L. R., 5 Cal. 756.

618. The Court may either stay the proceedings or proceed in the Court may pass decree case notwithstanding such reference, and may contingent upon opinion of pass a decree or order contingent upon the High Court. opinion of the High Court on the point referred ;

but no execution shall be issued, property sold, or person imprisoned in any case in which such reference is made until the receipt of a copy of the judgment of the High Court upon such reference.

THE above section applies to M. S. C. C. and P. S. C. C.

619. The High Court shall hear the parties to the case in which the Judgment of High Court to be transmitted, and case disposed of accordingly. reference is made, in person or by their respective pleaders, and shall decide the point so referred, and shall transmit a copy of its judgment, under the signature of the Registrar, to the Court by which the reference was made; and such Court shall, on the receipt thereof, proceed to dispose of the case in conformity with the decision of the High Court.

THE above section applies to M. S. C. C. and P. S. C. C.

Costs of reference to **620.** Costs (if any) consequent on a reference for the opinion of the High Court shall be costs in the case.

THE above section applies to M. S. C. C. and P. S. C. C.

621. When a case is referred to the High Court under this chapter, the High Court may return the case for amendment, and may alter, cancel, or set aside any decree or order which the Court making the reference has passed in the case out of which the reference arose, and make such order as it thinks fit

Power to alter, &c., decrees of Court making reference.

THE above section applies to M. S. C. C. and P. S. C. C.

622. The High Court may call for the record of any case in which no appeal lies to the High Court, if the Court by which the case was decided appears to have exercised a jurisdiction not vested in it by law,

Power to call for record of cases not appealable to High Court.

or to have failed to exercise a jurisdiction so vested, or to have acted in the exercise of its jurisdiction illegally or with material irregularity; and may pass such order in the case as the High Court thinks fits.

THE above section applies to M. S. C. C. and P. S. C. C.

THE discretionary power of a Civil Court, before or against which an offence mentioned in s. 468 or 469 of Act X. of 1872 is alleged to have been committed, to grant or withhold sanction to the prosecution for such offence, is not subject to revision by the High Court under s. 622 of Act X. of 1877.—In the matter of the petition of Madho Pershad, I. L. R., 3 All. 508.

S. 9 of the Specific Relief Act does not prohibit a rehearing under s. 105 of the Code of Civil Procedure. A rehearing differs widely from a review. A High Court can interfere under s. 622 of the Code of Civil Procedure without an application made to it by a party to a suit.—Andrew Anthony (Plaintiff), Appellant, and Rev. J. M. Dupont (Second Defendant), Respondent, I. L. R., 4 Mad. 217.

THE rule of English practice which prevents a minor from instituting a suit *in forma pauperis* through his next friend, unless he gives proof not only that he is himself a pauper, but that the next friend is a pauper, and that he cannot get any substantial person to act as his next friend, is not to be found in, or deduced from, the provisions of the Civil Procedure Code.—Venkatanarasāya by his father and guardian Linga Rāyadu (Petitioner) v. Achemma (Counter-Petitioner), I. L. R., 3 Mad. 3.

WHERE an auction-purchaser applied to the High Court to set aside, in the exercise of its powers under s. 622 of the Civil Procedure Code, an order setting aside a sale of immovable property in execution of a decree, on the ground that such order was illegal, such application being made nearly seventeen months after the date of such order, the Court, having regard to the time that had elapsed before such application was made, refused to interfere.—In the matter of the petition of Durga Prasad v. Sheo Charan Lal and others, I. L. R., 4 All. 154.

IT is only on the application of a party interested that the High Court can act as a Court of Revision under s. 622 of the Civil Procedure Code. Accordingly, where a Munsif, considering that the Subordinate Judge had acted without jurisdiction in setting aside, on appeal, certain orders made by him, brought the matter to the knowledge of the District Judge, who took the same view, and the latter referred the case to the High Court under that section, it was held that the Court had no power to interfere.—Muhammad Faiz Chaudhri (Plaintiff) v. Goluck Dass (Defendant), I. L. R., 7 Cal. Law Rep. 191.

WHERE an application was made for the issue of execution of decree, and the District Munsif made an order refusing execution, the decree being one passed not in a regular suit, and governed by the one-year limitation; and the Subordinate Judge on appeal reversed the Munsif's order, applying the three years' limitation; *Held* by the High Court that, as Act X. of 1877, s. 588, provided that orders passed in appeal from orders under s. 244 should be final, no second appeal lay; and that the High Court could not interfere under s. 622, as the Subordinate Judge had jurisdiction to hear the appeal.—Suryaprakasa Rāu v. Vaisya Sanniāsi Rāu, I. L. R., 1 Mad. 401.

AN application to sue as a pauper having been refused, on the ground that the suit was barred by limitation, the High Court, on revision, permitted the applicant to renew his application to the Court below. The Subordinate Judge verbally rejected this second application, stating that he would deliver a written judgment. Before the written judgment was delivered, the applicant offered to pay the usual court-fees (although not actually tendering them at the time), and asked that the petition might be taken as a plaint filed on the date of the first application. This offer was mentioned and refused in the written judgment. *Held*, on the case coming up to the High Court under Act X. of 1877, s. 622, that the circumstances of the case were not such as would justify the Court in interfering under that section.—Ramsahai Sing v. Maniram, I. L. R., 5 Cal. 807.

NO Court, other than a Court of Appeal or a High Court acting under s. 622, can discharge an order of attachment issued by another Court. Where a claimant to

property attached in execution of a decree intervenes, but fails to get the order of attachment set aside, and is compelled to bring a suit to establish his right, the discharge of the order of attachment cannot properly be asked for in such suit. The intervenor, having established his title by declaratory decree or otherwise, should then carry the decree to the Court by which the order of attachment was issued, and such Court is bound to recognize the adjudication, and govern itself accordingly.—*Naráyanrav Dámodar v. Bákrishna Mahadev Gadre* (I. L. R., 4 Bom. 529) followed.—*Kolasherry Illath Narainan* and another (Plaintiffs), Appellants, and *Kolasherry Illath Nilakandan Nambúdiri* and another (Defendants), Respondents, I. L. R., 4 Mad. 131.

AFTER a mortgage had been foreclosed under the provisions of Regulation XVII. of 1806, the representative of the mortgagor deposited the mortgage-money in Court. The District Judge ordered that the money should be paid to the mortgagee on the ground that the mortgagor had not been personally served with the notice required by s. 8 of that Regulation, and that it did not appear that she had been aware of the foreclosure proceedings. The District Judge subsequently ordered the mortgagee, who was in possession of the mortgaged property under the term of the mortgage, to surrender the property. The mortgagee applied to the High Court to revise these orders under s. 622 of Act X. of 1877. *Held* that the application was entertainable under the provisions of that section, and that the orders of the District Judge were made without jurisdiction, and should be set aside.—*Hazari Lal* (Petitioner) *v.* *Kheru Rai* (Opposite Party), I. L. R., 3 All. 576.

WHEN a Court has refused to file an award upon an application under s. 525, Civil Procedure Code, no appeal lies against such decision, which is an order, and not a decree; but the High Court can interfere under s. 622. An award made under s. 525, which is partly within and partly exceeds the terms of the submission to arbitration, cannot be enforced by summary procedure under s. 526 as to such portion as does not exceed those terms. To refer to arbitration questions arising on the construction of the award and questions left undecided by it as a matter beyond the scope of an agreement to submit to a scheme for the future management of a *dévassam* as regards conduct of suits, granting of demises, custody of property, collection of rents, appointment and removal of servants, and defrayment of current expenditure.—*R. Ky. Māna Vikrama, Zámorin, Mahārāja Bahadur of Calicut* (Plaintiff), *Petitioner, v. Mallichery Kristnan Nambudri* (Defendant), Counter-Petitioner, I. L. R., 3 Mad. 68.

S INSTITUTED a suit against T in the Court of the Assistant Collector of the first class, who dismissed the suit. On appeal by S the District Court gave her a decree. On second appeal by T the High Court held that, as the suit was one of the nature cognizable in a Court of Small Causes, a second appeal would not lie in the case, and dismissed it. T thereupon applied to the High Court to set aside, under the provisions of s. 622 of Act X. of 1877, the proceedings of both the lower Courts, on the ground that both those Courts had exercised a jurisdiction not vested in them by law. *Held* that the High Court was competent to entertain such application, and to quash the proceedings of both the lower Courts, under the provisions of s. 622 of Act X. of 1877, and the proceedings of both those Courts should be quashed. Observations by Stuart, C.J., on the powers of revision of the High Court under s. 622 of Act X. of 1877.—*Sarnam Tewari* and another (Defendants) *v. Sakina Bibi* (Plaintiff), I. L. R., 3 All. 417.

Per Pearson, J., Oldfield, J., and Straight, J.—When, under s. 622 of Act X. of 1877, the High Court has called for the record of a case in which no appeal lies to it, it may, under that section, pass any order in such case which it might pass if it dealt with the case as a second appeal under chap. xlii. of that Act. *Per* Stuart, C.J.—The High Court may, under that section, pass in such case any order, whether in regard to fact or law, as it thinks proper. Where, in a case of the execution of a decree in which no second appeal lay to the High Court, the Appellate Court held, on the construction of the decree, that it awarded interest on the principal amount of the decree, the High Court, under s. 622 of Act X. of 1877, holding that the Appellate Court has misconstrued the decree, and that the decree did not award such interest, modified the order of the Appellate Court accordingly.—In the matter of the petition of *Maulvi Muhammad* (Judgment-debtor) *v. Syed Husain* (Decree-holder), I. L. R., 3 All. 263 (F.B.).

THE purchaser at a sale by public auction did, by the exercise of fraud and collusion with the agent of the execution-creditor (though without the creditor's personal knowledge), succeed in becoming the purchaser at a depreciated value. There was no material irregularity in publishing or conducting the sale : *Held* that the Court which ordered the sale had jurisdiction to refuse to confirm the sale on the ground of the fraud practised by the agent of the execution-creditor and the purchaser. *Held* also that the High Court had power under section 622 of Act X. of 1877 to rescind the order made by the Court of first instance confirming the sale. *Held* by Kernan, J.—That the party defrauded ought not to be referred to bring a regular suit. The question ought to be decided at once on motion in the original cause. *Held* by Muttasámi Ayyár, J., that fraud was a valid ground of relief on petition when it related to the mode in which the auction was held, and the purchaser was a party to it, but it was doubtful whether fraud was a ground of relief on petition when it was a remote cause of the sale.—*Subbaji Ram v. Srinivása Ráu and Palliah*, I. L. R., 2 Mad. 264.

A AND B, both of whom set up a claim to certain land, brought separate rent-suits against the tenants. In none of these suits did the amount claimed exceed Rs. 100. Subsequently to the institution of the rent-suits, A sued B to establish his title to the land in dispute. The District Judge, before whom the rent-suits came on appeal, allowed them to stand over until the decision in the suit between A and B. That suit was decided in favour of B, and the Judge then decided the rent-suits instituted by B in his favour, and dismissed the suits instituted by A. *Held* that no second appeal would lie in the rent-suits, as no question of title between parties having conflicting claims was decided in them. *Held* also that there was no such irregularity on the part of the District Judge in the course which he pursued of making his decision in the rent-suit depend upon the decision in the suit to establish title, as would justify the Court in interfering under s. 622 of the Civil Procedure Code. Section 102 of Beng. Act VIII. of 1869 was enacted in order to protect parties in the position of raiyat-defendants, and to prevent their being dragged up to the High Court in cases where the decree or demand is under Rs. 100. In such cases the decree is intended to have the same effect as that of the Small Cause Court.—*Doorga Narian Sen v. Ram Lall Chhutar*, I. L. R., 7 Cal. 330.

CERTAIN immoveable property was, on the 15th February 1879, notified for sale under a decree of a Civil Court on 15th March following, so that only 29, instead of 30, days elapsed between the day of the sale and the notification. The sale having taken place, the execution-debtor applied to the Deputy Commissioner to set it aside upon the ground that the sale was illegal, the requirements of Act X. of 1877, s. 290, being essential to its validity. Upon that ground the sale was set aside as illegal by the Deputy Commissioner. On appeal, the Judicial Commissioner reversed this decision, on the ground that the fact of the sale having taken place 29 instead of 30 days after the notification was merely an irregularity, and that, as the execution-debtor had not shown that he had suffered any damage from the irregularity, the sale ought to be confirmed. An application was then made to a Division Bench of the High Court to set aside the order of the Judicial Commissioner confirming the sale, upon the ground that it was manifestly erroneous, and the Division Bench referred the question to a Full Bench : Whether assuming the requirements of s. 290 to be essential to the validity of a sale, the High Court had any power, either under 24 and 25 Vic., c. 105, s. 15, or Act X. of 1877, s. 622, as amended, to set aside the Judicial Commissioner's order : *Held* by the Full Bench, without answering the question referred, that, assuming the requirements of s. 290 to be essential, the High Court had a right, under its summary powers, to set aside the sale itself, notwithstanding (and apart from the question whether it would set aside) the order of the Judicial Commissioner.—*In re Bhekraj Keori*, I. L. R., 5 Cal. 878 (F. B.).

PART VIII.

CHAPTER XLVII.

OF REVIEW OF JUDGMENT.

Application for review of judgment.

623. Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is hereby allowed, but from which no appeal has been preferred ;

(b) by a decree or order from which no appeal is hereby allowed ; or
(c) by a judgment on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge, or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him,

may apply for a review of judgment to the Court which passed the decree or made the order, or to the Court (if any) to which the business of the former Court has been transferred.

A party who is not appealing from a decree may apply for a review of judgment notwithstanding the pendency of an appeal by some other party, except when the ground of such appeal is common to the applicant and appellant, or when, being a respondent, he can present to the Appellate Court the case on which he applies for the review.

THE above section applies to M. S. C. C.

THE order passed under the above section can be reviewed under Act X. of 1877, s. 623.—*Eliza Smith v. The Secretary of State*, 1. L. R., 3 Cal. 340.

THE absence of a formal finding on an issue tried and decided by a High Court of first instance is not an error calling for review of judgment in the High Court. A party who not only had an opportunity of raising a question, but who did raise it in appeal, and on argument abandoned it, cannot, under ordinary circumstances, be allowed to agitate the question on review.—*Sabapathi v. Subráya Ramanadha*, 1. L. R., 2 Mad. 58.

APPLICATIONS for the extension of the period for the submission of an award, and orders thereon, should be made in writing and recorded. When a party has been prejudiced by having the time allowed for taking objections to an award curtailed by the Court, no appeal lies, but a review should be granted by the Court of first instance.—*Monji Premji Set (Plaintiff), Appellant, v. Maliyakel Koyassan Koya Haji (Defendant), Respondent*, 1. L. R., 3 Mad. 59.

WHERE a Judge allowed a review of his predecessor's judgment on the sole ground that it appeared to him that the judgment of his predecessor had done injustice : *Held* by the High Court (Morgan, C.J., and Innes, J.) that though the generality of the terms used in the sections of the Procedure Code, Act VIII. of 1859, relating to review of judgment, viz., "other good and sufficient reason" (see 376) and "otherwise requisite for the ends of justice" (see 378), confers a wide jurisdiction, this jurisdiction could not be held to authorize a Judge to revise and reverse his predecessor's decree on the ground above-mentioned. If the review is asked for in reference to the conclusions of fact drawn from the evidence, it should not be granted simply upon the same evidence. *Reasut Hussani v. Hadjee Abdoolah* discussed.—*Raman v. Kurunatha Tharakan*, 1. L. R., 2 Mad. 10.

624. Except upon the ground of the discovery of such new and im-

portant matter or evidence as aforesaid, or of
To whom applications for review may be made. some clerical error apparent on the face of the
decree, no application for a review of judgment, other than that of a
High Court, shall be made to any Judge other than the Judge who de-
livered it.

THE above section applies to M. S. C. C.

A JUDGE of a Mufassal Small Cause Court has jurisdiction to direct a new trial of a case tried by his predecessor, s. 21 of Act XI. of 1865 not having been repealed by the Civil Procedure Code (Act X. of 1877). *Per* Garth, C.J.—The Judge, however, in dealing with applications for new trial under s. 21, should have regard to the rule laid down in s. 624 of the Code of Civil Procedure.—*Shumsher Ally v. Kurkut Shah*, I. L. R., 6 Cal. 236.

625. The rules hereinbefore contained as to the form of making

Form of applications for appeals shall apply, *mutatis mutandis*, to ap-
review. plications for review.

THE above section applies to M. S. C. C.

AN ORDER made under Act X. of 1877, s. 409, refusing leave to sue as a pauper, is subject to review under s. 623. The provisions of s. 413 do not affect the right of a person against whom such order has been made to obtain a review. A petitioner applying for such review must file a copy of the order of which he seeks a review, together with a memorandum of objections (ss. 541 and 625).—*Adarji Edulji v. Manikji Edulji*, I. L. R., 4 Bom. 414.

Application when rejected.

626. If it appears to the Court that there is not sufficient ground for review, it shall reject the application.

If the Court be of opinion that the application for the review
Application when granted. should be granted, it shall grant the same, and the Judge shall record with his own hand his reasons for such opinion.

Proviso.

Provided that—

(a) no such application shall be granted without previous notice to the opposite party to enable him to appear and be heard in support of the decree a review of which is applied for; and

(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him, when the decree or order was passed, without strict proof of such allegation.

THE above section applies to M. S. C. C.

THE Judge of a Mufassal Small Cause Court may grant an application for a review of judgment under Act X. of 1877.—*Isan Chunder Banerjee v. Luchun Gope*, I. L. R., 5 Cal. 699.

AN application under s. 311 of Act X. of 1877 to set aside a sale in execution of a decree having been made by the judgment-debtor, the Court executing the decree (Subordinate Judge) disallowed the objections, and passed an order confirming such sale. The judgment-debtor subsequently applied to the Subordinate Judge for a review of judgment. The Subordinate Judge, without recording his reasons for granting such application, irregularly proceeded at once to pass an order setting aside such sale, without cancelling the previous order confirming it. The auction-purchaser appealed to the District Judge. That officer, treating the appeal as one from an order granting an application for review of judgment, entertained it, and set aside the Subordinate Judge's second order. *Held* that the District Judge was

not justified in entertaining such appeal, such order not being one granting an application for review, but one setting aside a sale, and as such not appealable. Before a review of judgment is granted, an order granting the application for review and the reasons for granting the same should be recorded.—*Bhairon Din Singh* (Judgment-debtor) *v.* *Ram Sahai* (Auction-purchaser), I. L. R., 3 All. 316.

627. If the Judge or Judges, or any one of the Judges, who passed the decree or order, a review of which is applied for, continues or continue attached to the Court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause, for a period of six months next after the application, from considering the decree or order to which the application refers, such Judge or Judges, or any of them, shall hear the application, and no other Judge or Judges of the Court shall hear the same.

THE above section applies to M. S. C. C.

628. If the application for a review be heard by more than one Judge, and the Court be equally divided, the application shall be rejected.

If there be a majority, the decision shall be according to the opinion of the majority.

THE above section applies to M. S. C. C.

629. An order of the Court for rejecting the application shall be final; but whenever such application is admitted, the admission may be objected to on the ground that it was

- (a) in contravention of the provisions of section 624,
- (b) in contravention of the provisions of section 626, or
- (c) after the expiration of the period of limitation prescribed therefor and without sufficient cause.

Such objection may be made at once by an appeal against the order granting the application, or may be taken in any appeal against the final decree or order made in the suit.

Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and, if it be proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court may order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.

No order shall be made under this section unless the applicant has served the opposite party with notice in writing of the latter application.

No application to review an order passed on review or on an application for a review shall be entertained.

THE above section applies to M. S. C. C.

An application under s. 311 of Act X. of 1877 to set aside a sale in execution of a decree having been made by the judgment-debtor, the Court executing the decree (Subordinate Judge) disallowed the objections, and passed an order confirming such sale. The judgment-debtor subsequently applied to the Subordinate Judge for a review of judgment. The Subordinate Judge, without recording his reasons

for granting such application, irregularly proceeded at once to pass an order setting aside such sale, without cancelling the previous order confirming it. The auction-purchaser appealed to the District Judge. That officer, treating the appeal as one from an order granting an application for review of judgment, entertained it, and set aside the Subordinate Judge's second order. *Held* that the District Judge was not justified in entertaining such appeal, such order not being one granting an application for review, but one setting aside a sale, and as such not appealable. Before a review of judgment is granted, an order granting the application for review and the reasons for granting the same should be recorded.—*Bhairon Din Singh (Judgment-debtor) v. Ram Sahai (Auction-purchaser)*, I. L. R., 3 All. 316.

630. When an application for a review is granted, a note thereof shall be made in the register, and the Court may at once re-hear the case, or make such order in regard to the re-hearing as it thinks fit.

Registry of application granted, and order for re-hearing.

THE above section applies to M. S. C. C.

PART IX.

CHAPTER XLVIII.

SPECIAL RULES RELATING TO THE CHARTERED HIGH COURTS.

631. This chapter applies only to High Courts which are or may hereafter be established under the twenty-fourth and twenty-fifth of Victoria, chapter 104 (*An Act for establishing High Courts of Judicature in India*).

Chapter to apply only to certain High Courts.

Application of Code to High Courts.

632. Except as provided in this chapter, the provisions of this Code apply to such High Courts.

High Court to record judgments according to its own rules.

633. The High Court shall take evidence, and record judgments and orders, in such manner as it by rule from time to time directs.

634. Whenever a High Court considers it necessary that a decree made in the exercise of its ordinary original civil jurisdiction should be enforced before the amount of the costs incurred in the suit can be ascertained by taxation, the Court may order that the decree shall be executed forthwith, except as to so much thereof as relates to the costs; and, as to so much thereof as relates to the costs, that the decree may be executed as soon as the amount of the costs shall be ascertained by taxation.

Power to order execution of decree before ascertainment of costs, and

execution for costs subsequently.

635. Nothing in this Code shall be deemed to authorize any person on behalf of another to address the Court in the exercise of its ordinary original civil jurisdiction, or to examine witnesses, except when the Court shall have, in the exercise of the power conferred by its charter, authorized him so to do, or to interfere with the power of the High Court to make rules concerning advocates, vakils, and attorneys.

Unauthorized persons not to address Court.

636. Notices to produce documents, summonses to witnesses, and

Who may serve process every other judicial process, issued in the exercise of the ordinary or extraordinary original civil jurisdiction of the High Court, and of its matrimonial, testamentary, and intestate jurisdictions, except summonses to defendants issued under section 64, writs of execution, and notices under section 553, may be served by the attorneys in the suit, or by persons employed by them, or by such other persons as the High Court by any rule or order from time to time directs.

637. Any non-judicial or quasi-judicial act which this Code requires

Non-judicial acts may be to be done by a Judge, and any act which may be done by a Commissioner appointed to examine and adjust accounts under section 394, may be done by the Registrar of the Court, or by such other officer of the Court as the Court may direct to do such act.

The High Court may, from time to time, by rule declare what shall be deemed to be non-judicial and quasi-judicial acts within the meaning of this section.

638. The following portions of this Code shall not apply to the

Sections not applying to High Court in original civil jurisdiction. High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, namely, sections 16, 17, and 19, sections 54, clauses (a) and (b), 57, 119, 160, 182 to 185 (both inclusive), 187, 189, 190, 191, 192 (so far as relates to the manner of taking evidence), 198 to 206 (both inclusive), and so much of section 409 as relates to the making of a memorandum ;

and section 579 shall not apply to the High Court in the exercise of its appellate jurisdiction.

Code not to affect High Court in exercise of insolvent jurisdiction.

Nothing in this Code shall extend or apply to any Judge of a High Court in the exercise of jurisdiction as an Insolvent Court.

639. The High Court may, from time to time, frame forms for any

Power to frame forms.

proceeding in such Court, and may make rules as to the books, entries, and accounts to be kept by its officers.

PART X.

CHAPTER XLIX.

MISCELLANEOUS.**640. Women, who, according to the customs and manners of the**

Exemption of certain women from personal appearance. country, ought not to be compelled to appear in public, shall be exempt from personal appearance in Court.

But nothing herein contained shall be deemed to exempt such women from arrest in execution of civil process.

THE above section applies to M. S. C. C. and P. S. C. C.

It is not necessary that a special order of Court should be made, empowering an officer authorized to arrest a purda-nashin lady to enter the zanána of the house in which she resides. Under s. 336 of the Civil Procedure Code, if the officer is able to enter the house, he may break into any room in the house, including the zanána, in order to effect the arrest.—S. M. Kadumbinee Dossee v. S. M. Koylashkaminee Dossee, I. L. R., 7 Cal. 19.

641. The Local Government may, by notification in the official Gazette, exempt from personal appearance in Court any person whose rank, in the opinion of such Government, entitles him to the privilege of exemption, and may, by like notification, withdraw such privilege.

The names and residences of the persons so exempted shall, from time to time, be forwarded to the High Court by the Local Government, and a list of such persons shall be kept in such Court, and a list of such persons as reside within the local limits of the jurisdiction of each Court subordinate to the High Court shall be kept in such subordinate Court.

When any person so exempted claims the privilege of such exemption, and it is consequently necessary to examine him by commission, he shall pay the costs of that commission, unless the party requiring his evidence pays such costs.

THE above section applies to M. S. C. C. and P. S. C. C.

642. No. Judge, Magistrate, or other judicial officer shall be liable to arrest under civil process while going to, presiding in, or returning from, his Court.

And, except as provided in sections 256 and 643, where any matter is pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders, mukhtárs, revenue-agents, and recognized agents, and their witnesses acting in obedience to a summons, shall be exempt from arrest under civil process while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal.

THE above section applies to M. S. C. C. and P. S. C. C.

WHERE a defendant in a suit in the High Court was arrested in execution of a decree of the Calcutta Court of Small Causes, while attending before an arbitrator appointed by the High Court to take a reference in the suit, it was held, that he was privileged from such arrest while so attending, and that the High Court had power to direct his release from custody. Small Cause Courts in the presidency towns are subject to the order and control of the High Courts. In the matter of Omirtolal Dey, I. L. R., 1 Cal. 78, followed.—In the matter of Jugessur Roy, I. L. R., 5 Cal. Law Rep. 170.

THE general rule that a party to a suit is protected from arrest upon any civil process, while going to the place of trial, while attending there for the purpose of the cause, and while returning home, applies to a defendant to a suit under the summary-procedure sections of Act X. of 1877 who has not obtained leave to appear and defend, and who, therefore, cannot be heard at the trial. Questions as to the privilege of exemption from arrest, in the case of persons arrested under writs

issued from the Small Cause Court in Calcutta, must be governed by the English law, and not by s. 642 of the above Act. It is not a deviation sufficient to forfeit the privilege if the shortest road home is deviated from, and a less crowded and more convenient road adopted.—*In re Soorendro Nath Ray Chowdhry*, I. L. R., 5 Cal. 106.

A REVENUE Court is a "Court of Civil Judicature" within the meaning of s. 651 of the Code of Civil Procedure. A person, therefore, who escapes from custody under the process of a Revenue Court is punishable under that section. S. 642 of the Civil Procedure Code only protects an accused person while he is attending a Criminal Court from arrest "under that Code." *Held*, therefore, where a person, who had been convicted by a Magistrate, and had been fined, was arrested in execution of the process of a Revenue Court while waiting in Court until the money to pay such fine was brought, that such person was not protected from such arrest by the provisions of that section, and that, having escaped from custody under such arrest, such person had properly been convicted under s. 651 for escaping from "lawful custody."—*Empress of India v. Harakh Nath Singh*, I. L. R., 4 All. 27.

643. When, in a case pending before any Court, there appears to

Procedure in case of cer- the Court sufficient ground for sending for in-
tain offences. vestigation to the Magistrate a charge of any
such offence as is described in section 193, section 196, section 199, section
200, section 205, section 206, section 207, section 208, section 209,
section 210, section 463, section 471, section 474, section 475, section
476, or section 477 of the Indian Penal Code, which may be made in
the course of any other suit or proceeding, or with respect to any docu-
ment offered in evidence in the case, the Court may cause the person
accused to be detained till the rising of the Court, and may then send
him in custody to the Magistrate, or take sufficient bail for his appear-
ance before the Magistrate.

The Court shall send to the Magistrate the evidence and docu-
ments relevant to the charge, and may bind over any person to appear
and give evidence before such Magistrate.

The Magistrate shall receive such charge and proceed with it ac-
cording to law.

THE above section applies to M. S. C. C. and P. S. C. C.

644. Subject to the power conferred on the High Court by section

Use of forms in fourth 639 and by the twenty-fourth and twenty-fifth
schedule. of Victoria, chapter 104, section 15, the forms
set forth in the fourth schedule hereto annexed, with such variation as
the circumstances of each case require, shall be used for the respective
purposes therein mentioned.

THE above section applies to M. S. C. C. and P. S. C. C.

645. The language which, when this Code comes into force, is the

Language of subordinate language of any Court subordinate to a High
Courts. Court, shall continue to be the language of such
subordinate Court until the Local Government otherwise orders;

but it shall be lawful for the Local Government from time to time
to declare what language shall be the language of every such Court.

THE above section applies to M. S. C. C. and P. S. C. C.

645A. In any Admiralty or Vice-Admiralty cause of salvage, tow-
Assessors in causes of age, or collision, the Court, whether it be
salvage, &c. exercising its original or its appellate jurisdic-
tion, may if it thinks fit, and upon request of either party to such cause
shall, ~~summon~~ to its assistance, in such manner as the Court may, by
rule, from time to time, direct, two competent assessors; and such assessors
shall attend and assist accordingly.

Every such assessor shall receive such fees for his attendance as
the Court by rule prescribes. Such fees shall be paid by such of the
parties as the Court in each case may direct.

THE above section applies to M. S. C. C. and P. S. C. C.

646. Whenever the Registrar of a Court of Small Causes has
Power of Registrars of any doubt upon any question of law or usage
Small Cause Courts to state having the force of law, or as to the construc-
cases. tion of a document, which construction may
affect the merits of the decision, he may state a case for the opinion of
the Judge; and all the provisions herein contained relative to the stat-
ing of a case by the Judge shall apply, *mutatis mutandis*, to the stat-
ing of a case by the Registrar.

THE above section applies to M. S. C. C. and P. S. C. C.

647. The procedure herein prescribed shall be followed, as far it can
Miscellaneous proceed- be made applicable, in all proceedings in
ings. any Court of civil jurisdiction other than suits
and appeals.

The High Court may, from time to time, make rules to provide for
Admission of affidavits as the admission, in such proceedings, of affida-
evidence. vits as evidence of the matters to which such
affidavits respectively relate; and such rules, on being published in the
local official Gazette, shall have the force of law.

THE above section applies to M. S. C. C. and P. S. C. C.

THE procedure to be followed upon the sale of an under-tenure is that pre-
scribed by the Civil Procedure Code. S. 311 does not apply only to sales made under
chap. xix. of the Code, and the sale of an under-tenure may be set aside upon any
of the grounds mentioned in that section.—*Azizoonnessa Khatoon v. Gora Chand*
Dass, I. L. R., 7 Cal. 163.

THE provisions of the Letters Patent of 1865, cl. 36, that when the Judges of a
Division Bench are equally divided in opinion, the opinion of the Senior Judge shall
prevail, has been superseded by Act X. of 1877, s. 575 (which is extended to miscella-
neous proceedings of the nature of appeals by s. 647 of that Act), so far as regards
cases to which s. 575 is applicable.—*Appaji Bhiván v. Shivról Khubchand*, I. L. R.,
3 Bom. 204 (F. B.).

FAILURE to comply with the provisions of ss. 182 and 183 of Act X. of 1877
(Civil Procedure Code) in a judicial proceeding is an informality which renders the
deposition of an accused inadmissible in evidence on a charge of giving false evi-
dence based on such deposition; and under s. 91 of Act I. of 1872 (Indian Evi-
dence Act), no other evidence of such deposition is admissible.—In the matter of
the petition of *Mayadeb Gossami*. The *Empress v. Mayadeb Gossami*, I. L. R., 6
Cal. 762.

Ss. 25 and 647 of the Civil Procedure Code (Act X. of 1877) are both applicable to
Courts of Small Causes in the Mufassal, and the former section is extended by the
latter to execution-proceedings in such Courts. Under s. 25 of the Civil Procedure

Code (Act X. of 1877), the District Judge has power to withdraw an application for execution of a decree from a subordinate Court (such as a Mufassal Court of Small Causes) and to dispose of it himself, or to transfer it to another subordinate Court competent to deal with it. The distinction made for the purposes of limitation between suits, appeals, and applications by the Limitation Acts, has no bearing upon a question of jurisdiction.—*Báláji Ranchoddas as Manager of the Estate of Mohanlal Dalsukhrām, Deceased (Applicant)*, I. L. R., 5 Bom. 680.

648. Where any Court desires that any person shall be arrested, or that any property shall be attached, under any provision of this Code not relating to the execution of decrees, and such person resides or property is situate outside the local limits of its jurisdiction, the Court may, in its discretion, issue a warrant of arrest or make an order of attachment, and send to the District Court within the local limits of whose jurisdiction such person or property resides or is situate a copy of the warrant or order, together with the probable amount of the costs of the arrest or attachment.

The District Court shall, on receipt of such copy and amount, cause the arrest or attachment to be made by its own officers, or by a Court subordinate to itself, and shall inform the Court which issued or made such warrant or order of the arrest or attachment;

and the Court making any arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he furnishes sufficient security for his appearance before that Court, or (where the case is one under Chapter XXXIV.) for satisfying any decree that may be passed against him by such Court, in either of which cases the Court making the arrest shall release him.

THE above section applies to P. S. C. C.

A DECREE of a Small Cause Court can be executed by it at any place within the local limits of the District Court to which it is subordinate, as defined by Act X. of 1877, s. 2, without having recourse to the procedure under s. 648, which applies only to cases in which a decree passed in one district has to be executed in another district.—*Badan Bebajea v. Kala Chand Bebajea*, I. L. R., 4 Cal. 823.

ACT X. of 1877, s. 223, does not apply to a Small Cause Court, and s. 648 does not apply to a case in which the defendant resides within the same district in which the Court issuing a warrant is situate. Consequently, a Small Cause Court may issue a warrant for the arrest of a person residing in another district, but not if he resides within the same district in which the Court is situate, but outside its local jurisdiction.—*Chunilál Sobhárám v. Purbhudás Kursandás*, I. L. R., 2 Bom. 560.

649. The rules contained in Chapter XIX. shall apply to the execution of any judicial process for the arrest of a person or the sale of property or payment of money, which may be desired or ordered by a Civil Court in any civil proceeding.

In the same chapter, the expression 'Court which passed a decree,' or words to that effect, shall, unless there is something repugnant in the context, be deemed to include, where the decree to be executed is passed in appeal, the Court which passed the decree against which the appeal was preferred, and, where the Court which passed the decree to be executed has ceased to exist or to have jurisdiction to execute it, the

Court which, if the suit wherein the decree was passed were instituted at the time of making application for execution of the decree, would have jurisdiction to try such suit.

THE above section applies to M. S. C. C. and P. S. C. C.

ALTHOUGH the High Court, in its Appellate Side, does not, as a general rule, execute its own decrees or orders, yet this circumstance in no way affects the vitality of its jurisdiction in this respect, and it cannot therefore be included among Courts which have ceased to have jurisdiction to execute decrees as specified under s. 649 of the Code of Civil Procedure.—*Hurro Pershad Roy v. Bhupendro Narain Dutt*, I. L. R., 6 Cal. 201.

PER GARTH, C.J.—S. 649 of the Civil Procedure Code as amended by Act XII. of 1879, which explains the meaning of the expression, the “Court which passed the decree,” does not exclude the Court which originally passed the decree as being a Court in which an application for execution should be made, but merely includes another Court. When, therefore, a Court which has passed a decree has ceased to have jurisdiction to execute it, the application for execution may be made either to that Court, although it has ceased to have jurisdiction to execute the decree, or to the Court which (if the suit wherein the decree was passed were instituted at the time of making application to execute it) would have jurisdiction to try the suit. *Per Field, J.*—A Court does not cease to be “the Court which passed the decree” merely by reason that the head-quarters of such Court are removed to another place, or merely because the local limits of the jurisdiction of such Court are altered. An application for the transfer of a decree under the provisions of s. 223 and the following section of Act X. of 1877 is a step in aid of the execution of the decree within the meaning of cl. 4, art. 179, sched. ii. of Act XV. of 1877.—*Latchman Pundeh v. Maddan Mohun Shye*, I. L. R., 6 Cal. 513.

650. The provisions of Chapters XIV. and XV., relating to witnesses, shall apply to all persons required to give evidence or to produce documents in any proceeding under this Code.

Application of rules as to witnesses.

THE above section applies to M. S. C. C. and P. S. C. C.

650A. Summonses issued by any Civil or Revenue Court situate beyond the limits of British India may be sent to the Courts in British India, and served as if they had been issued by such Courts: Provided that the Courts issuing such summonses have been established by the authority of the Governor-General in Council, or that the Governor-General in Council has, by notification in the *Gazette of India*, declared the provisions of this section to apply to such Courts.

The Governor-General in Council may, by like notification, cancel any notification made under this section, but not so as to invalidate the service of any summons served previous to such cancellation.

THE above section applies to M. S. C. C. and P. S. C. C.

651. Whoever offers any resistance or illegal obstruction to the lawful apprehension of himself under this Code, or under the warrant of any Civil or Revenue Court, or escapes or attempts to escape from any custody in which he is lawfully detained under this Code or under such warrant, shall, on conviction before a

Penalty for resisting apprehension or escaping from custody under Code or civil process.

Magistrate, be punished with imprisonment for a term which may extend to six months, or with fine, which may extend to one thousand rupees, or with both.

THE above section applies to M. S. C. C. and P. S. C. C.

A REVENUE Court is a "Court of Civil Judicature" within the meaning of s. 651 of the Code of Civil Procedure. A person, therefore, who escapes from custody under the process of a Revenue Court is punishable under that section. S. 642 of the Civil Procedure Code only protects an accused person while he is attending a Criminal Court from arrest "under that Code." *Held*, therefore, where a person, who had been convicted by a Magistrate, and had been fined, was arrested in execution of the process of a Revenue Court while waiting in Court until the money to pay such fine was brought, that such person was not protected from such arrest by the provisions of that section, and that, having escaped from custody under such arrest, such person had properly been convicted under s. 651 for escaping from "lawful custody."—*Empress of India v. Harakh Nath Singh*, I. L. R., 4 All. 27.

652. The High Court may, from time to time, make rules consistent

Power to make subsidiary rules of procedure. with this Code to regulate any matter connected with its own procedure or the procedure of the Courts of Civil Judicature subject to its superintendence. All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

THE above section applies to M. S. C. C.

THE FIRST SCHEDULE.

(See section 3.)

ACTS REPEALED.

| Number and year. | Subject or title. | Extent of repeal. |
|------------------|-----------------------------------|---|
| X. of 1877. | The Code of Civil Procedure. | So much as has not been repealed. |
| XII. of 1879. | Amending Act X. of 1877, &c. . | Sections one to one hundred and three (both inclusive). |
| VII. of 1880. | Merchant Shipping | Section eighty-five. |

THE SECOND SCHEDULE.

(See section 5.)

Chapters and Sections of this Code extending to Provincial Courts of Small Causes.

PRELIMINARY: Sections 1, 2, 3, and 5.

CHAPTER I.—Of the Jurisdiction of the Courts and *Res Judicata*, except section 11.

CHAPTER II.—Of the Place of Suing, except section 20, paragraph 4, and sections 22 to 24 (both inclusive).

CHAPTER III.—Of Parties and their Appearances, Applications, and Acts.

CHAPTER IV.—Of the Frame of the Suit, except section 42 and section 44, rule a.

CHAPTER V.—Of the Institution of Suits.

CHAPTER VI.—Of the Issue and Service of Summons, except section 77.

CHAPTER VII.—Of the Appearance of the Parties and Consequence of Non-appearance.

CHAPTER VIII.—Section 111, Set-off.

CHAPTER IX.—Of the examination of the Parties by the Court, except section 119.

CHAPTER X.—Of Discovery and the Admission, &c., of Documents.

CHAPTER XII.—Section 155, first paragraph, Judgment where either party fails to produce his evidence.

CHAPTER XIII.—Of Adjournments.

CHAPTER XIV.—Of the Summoning and Attendance of Witnesses.

- CHAPTER XV.**—Of the Hearing of the Suit and Examination of Witnesses, except sections 182 to 188 (both inclusive).
- CHAPTER XVII.**—Of Judgment and Decree, except sections 204, 207, 211, 212, 213, 214, and 215.
- CHAPTER XVIII.**—Sections 220, 221, and 222, Of Costs.
- CHAPTER XIX.**—Of the Execution of Decrees, sections 223 to 236 (both inclusive), 239 to 258 (both inclusive), 259 (except so far as relates to the recovery of wives), 266 (except so far as relates to immoveable property), 267 to 272 (both inclusive), 273 (so far as relates to decrees for moveable property), 275 to 280 (both inclusive), 283, 284 (so far as relates to moveable property), 285, 286, 287, 288, 289, 290, 291, 292, 293 (so far as relates to re-sales under 297), 294 to 303 (both inclusive), 328 to 333 (both inclusive, so far as relates to moveable property), 336 to 343 (both inclusive).
- CHAPTER XX.**—Section 360, Power to invest certain Courts with Insolvency-jurisdiction.
- CHAPTER XXI.**—Of the Death, Marriage, and Insolvency of Parties.
- CHAPTER XXII.**—Of the Withdrawal and Adjustment of Suits.
- CHAPTER XXIII.**—Of Payment into Court.
- CHAPTER XXIV.**—Of requiring Security for Costs.
- CHAPTER XXV.**—Of Commissions.
- CHAPTER XXVI.**—Suits by Paupers.
- CHAPTER XXVII.**—Suits by and against Government or Government Servants.
- CHAPTER XXVIII.**—Suits by Aliens and by and against Foreign and Native Rulers, except the first paragraph of section 433.
- CHAPTER XXIX.**—Suits by and against Corporations and Companies.
- CHAPTER XXX.**—Suits by and against Trustees, Executors, and Administrators.
- CHAPTER XXXI.**—Suits by and against Minors and Persons of unsound Mind.
- CHAPTER XXXII.**—Suits by and against Military Men.
- CHAPTER XXXIII.**—Interpleader.
- CHAPTER XXXIV.**—Of Arrest and Attachment before Judgment, except as regards immoveable property.
- CHAPTER XXXV.**—Appointment of Receivers.
- CHAPTER XXXVI.**—Reference to Arbitration, sections 506 to 526 (both inclusive).
- CHAPTER XXXVII.**—Of Proceedings on Agreement of Parties.
- CHAPTER XLVI.**—Reference to and Revision by High Court.
- CHAPTER XLVII.**—Of Review of Judgment.
- CHAPTER XLIX.**—Miscellaneous, sections 640 to 647 (both inclusive), sections 649 to 652 (both inclusive).

THE THIRD SCHEDULE.

(See section 7.)

Bombay Enactments.

Bombay Regulation XXIX., 1827.

" " VII., 1830.

" " I., 1831.

" " XVI., 1831.

Act XIX. of 1835.

„ XIII. of 1842.

THE FOURTH SCHEDULE.

(See section 644.)

FORMS OF PLEADINGS AND DECREES.

A.—PLAINTS. PART I.

No. 1.

FOR MONEY LENT.

IN THE COURT OF AT

*Civil Suit No.**A. B., of**against**C. D., of**A. B., the above-named plaintiff, states as follows:—*

1. That on the day of 18 , at , he lent the defendant rupees, repayable on demand [*or on the day of*].

2. That the defendant has not paid the same, except rupees, paid on the day of 18 .

If the plaintiff claims exemption from any law of limitation, say:—

3. The plaintiff was a minor [*or insane*] from the day of till the day of .

4. The plaintiff prays judgment for rupees, with interest at per cent. from the day of 18 .

[NOTE.—The object of stating when the debt is to be repaid is merely to fix a date for interest. If, therefore, interest is not claimed, the statement may be omitted.]

. No. 2.

FOR MONEY RECEIVED TO PLAINTIFF'S USE.

(Title.)

A. B., and *G. H.*, the above-named plaintiffs, state as follows :—

1. That on the day of 18 , at , the defendant received rupees [or a cheque on the Bank for rupees] from one *E. F.* for the use of the plaintiffs.
2. That the defendant has not paid [or delivered] the same accordingly.
3. The plaintiffs pray judgment for rupees, with interest at per cent. from the day of 18 .

No. 3.

FOR PRICE OF GOODS SOLD BY A FACTOR.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , he and *E. F.*, since deceased, delivered to the defendant [*one thousand barrels of flour, five hundred maunds of rice, or as the case may be*] for sale upon commission.
2. That on the day of 18 [or on some day unknown to the plaintiff, before the day of 18], the defendant sold the said merchandise for rupees.
3. That the commission and expenses of the defendant thereon amount to rupees.
4. That on the day of 18 , the plaintiff demanded from the defendant the proceeds of the said merchandise.
5. That he has not paid the same.

[Demand of judgment.]

No. 4.

FOR MONEY RECEIVED BY DEFENDANT THROUGH THE PLAINTIFF'S MISTAKE OF FACT.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff agreed to buy, and the defendant agreed to sell, bars of silver, at annas per tola of fine silver.
2. That the plaintiff procured the said bars to be assayed by one *E. F.*, who was paid by the defendant for such assay, and that the said *E. F.* declared each of the said bars to contain 1,500 tolas of fine silver, and that the plaintiff accordingly paid the defendant rupees annas therefor.
3. That each of the said bars did contain only 1,200 tolas of fine silver.
4. That the defendant has not repaid the sum so overpaid.

[Demand of judgment.]

[NOTE.—A demand of repayment is not necessary, but it may affect the question of interest or the costs.]

No. 5.

FOR MONEY PAID TO A THIRD PARTY AT THE DEFENDANT'S REQUEST.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , at the request [or by the authority] of the defendant, the plaintiff paid to one E. F. rupees.

2. That, in consideration thereof, the defendant promised [or became bound] to pay the same to the plaintiff on demand [or as the case may be].

3. That [on the day of 18 , the plaintiff demanded payment of the same from the defendant, but] he has not paid the same.

[Demand of judgment.]

[NOTE.—If the request or authority is implied, the plaint should state facts raising the implication].

No. 6.

FOR GOODS SOLD AT A FIXED PRICE AND DELIVERED.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , E. F., of , deceased, sold and delivered to the defendant [one hundred barrels of flour, or the goods mentioned in the schedule hereto annexed, or sundry goods].

2. That the defendant promised to pay rupees for the said goods on delivery [or on the day of , some day before the plaint was filed].

3. That he has not paid the same.

4. That the said E. F. in his lifetime made his will, whereby he appointed the plaintiff executor thereof.

5. That on the day of 18 , the said E. F. died .

6. That on the day of probate of the said will was granted to the plaintiff by the Court of .

7. The plaintiff as executor as aforesaid .

[Demand of judgment.]

[NOTE.—If a day was fixed for payment, it should be stated as furnishing a date for the commencement of interest.]

No. 7.

GOODS SOLD AT A REASONABLE PRICE AND DELIVERED.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , plaintiff sold and delivered to the defendant [sundry articles of house-furniture], but no express agreement was made as to the price.

2. That the same were reasonably worth rupees.
3. That the defendant has not paid the same.

[*Demand of judgment.*]

[NOTE.—The law implies a promise to pay so much as the goods are reasonably worth.]

No. 8.

FOR GOODS DELIVERED TO A THIRD PARTY AT DEFENDANT'S REQUEST AT A FIXED PRICE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , plaintiff sold to the defendant [*one hundred barrels of flour*], and, at the request of the defendant, delivered the same to one *E. F.*

2. That the defendant promised to pay to the plaintiff rupees therefor.

3. That he has not paid the same.

[*Demand of judgment.*]

No. 9.

FOR NECESSARIES FURNISHED TO THE FAMILY OF DEFENDANT'S TESTATOR WITHOUT HIS EXPRESS REQUEST, AT A REASONABLE PRICE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , plaintiff furnished to [*Mary Jones*], the wife of [*James Jones*], deceased, at her request, sundry articles of [*food and clothing*], but no express agreement was made as to the price.

2. That the same were necessary for her.

3. That the same were reasonably worth rupees.

4. That the said *James Jones* refused to pay the same.

5. That the defendant is the executor of the last will of the said *James Jones*.

[*Demand of judgment.*]

No. 10.

FOR GOODS SOLD AT A FIXED PRICE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff sold to *E. F.*, of , deceased [*all the crops then growing on his farm in*].

2. That the said *E. F.* promised to pay the plaintiff rupees for the same.

3. That he did not pay the same.

4. That the defendant is administrator of the estate of the said *E. F.*

[*Demand of judgment.*]

No. 11.

FOR GOODS SOLD AT A REASONABLE PRICE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , *E. F.*, of
sold to the defendant [*all the fruit growing in his orchard in*],
but no express agreement was made as to the price.

2. That the same was reasonably worth rupees.

3. That the defendant has not paid the same.

4. That on the day of the High Court of Judicature
at Fort William duly adjudged the said *E. F.* to be a lunatic, and
appointed the plaintiff committee of his estate with the usual powers
for the management thereof.

5. The plaintiff as committee as aforesaid [*Demand of judgment*].

[NOTE.—When the lunatic's estate is not subject to the ordinary original jurisdiction of a High Court, for paragraphs 4 and 5 substitute the following :—

4. That on the day of the Civil Court of
duly adjudged the said *E. F.* to be of unsound mind and incapable of
managing his affairs, and appointed the plaintiff manager of his estate.

5. The plaintiff as manager as aforesaid [*Demand of judgment*].

No. 12.

FOR GOODS MADE AT DEFENDANT'S REQUEST, AND NOT ACCEPTED.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , *E. F.*, of ,
agreed with the plaintiff that the plaintiff should make for him (*six tables and fifty chairs*), and that the said *E. F.* should pay for the same
upon delivery thereof rupees.

2. That the plaintiff made the said goods, and on the day of
18 offered to deliver the same to the said *E. F.*, and has ever
since been ready and willing so to do.

3. That the said *E. F.* has not accepted the said goods or paid for the same.

4. That on the day of 18 , the High Court of Judicature
at Fort William duly adjudged the said *E. F.* to be a lunatic, and
appointed the defendant committee of his estate.

5. The plaintiff prays judgment for rupees with interest from the day of at the rate of per cent. per annum, to be paid out of the estate of the said *E. F.* in the hands of the defendant.

No. 13.

FOR DEFICIENCY UPON A RE-SALE [GOODS SOLD AT AUCTION].

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , plaintiff put up at auction sundry [*articles of merchandise*], subject to the condition that all goods not paid for and removed by the purchaser thereof within [*ten days*] after the sale should be re-sold by auction, on his account, of which condition the defendant had notice.

2. That the defendant purchased [*one crate of crockery*] at the said auction at the price of rupees.

3. That the plaintiff was ready and willing to deliver the same to the defendant on the said day and for [*ten days*] thereafter, of which the defendant had notice.

4. That the defendant did not take away the said goods purchased by him, nor pay therefor, within [*ten days*] after the sale, nor afterwards.

5. That on the day of 18 , at , the plaintiff re-sold the said [*crate of crockery*], on account of the defendant, by public auction, for rupees.

6. That the expenses attendant upon such re-sale amounted to rupees.

7. That the defendant has not paid the deficiency thus arising, amounting to rupees.

[*Demand of judgment.*]

[NOTE to § 4.—Unless the seller agreed to deliver, the purchaser must fetch the goods. See Act IX. of 1872, sec. 93.]

No. 14.

FOR THE PURCHASE-MONEY OF LANDS CONVEYED.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff sold [and conveyed] to the defendant [the house and compound, No. , in the city of , or a farm known as , in , or a piece of land lying, &c.].

2. That the defendant promised to pay the plaintiff rupees for the said [house and compound, or farm, or land].

3. That he has not paid the same.

[*Demand of judgment.*]

[NOTE.—Where there has been no actual conveyance, say in § 1, “sold to the defendant the house, &c., and placed him in possession of the same.”]

No. 15.

FOR THE PURCHASE-MONEY OF IMMOVEABLE PROPERTY CONTRACTED
TO BE SOLD, BUT NOT CONVEYED.*(Title.)**A. B.*, the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant, and that the defendant should purchase from the plaintiff [the house, No. , in the town of , or one hundred bighás of land in , bounded by the East Indian railroad, and by the other lands of the plaintiff] for rupees.

2. That on the day of 18 , at , the plaintiff tendered [or was ready and willing and offered to execute] a sufficient instrument of conveyance of the said property to the defendant on payment of the said sum, and still is ready and willing to execute the same.

3. That the defendant has not paid the said sum.

[Demand of judgment.]

No. 16.

FOR SERVICES AT A FIXED PRICE.

*(Title.)**A. B.*, the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant [hired plaintiff as a clerk, at the salary of rupees per year].

2. That from the [said day] until the day of 18 , the plaintiff served the defendant as his clerk.

3. That the defendant has not paid the said salary.

[Demand of judgment.]

No. 17.

FOR SERVICES AT A REASONABLE PRICE.

*(Title.)**A. B.*, the above-named plaintiff, states as follows :—

1. That between the day of 18 , and the day of 18 , at , plaintiff [executed sundry drawings, designs, and diagrams] for the defendant, at his request; but no express agreement was made as to the sum to be paid for such services.

2. That the said services were reasonably worth rupees.

3. That the defendant has not paid the same.

[Demand of judgment.]

No. 18.

FOR SERVICES AND MATERIALS AT A FIXED PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , plaintiff [furnished the paper for and printed one thousand copies of a book called] for the defendant, at his request [and delivered the same to him].
2. That the defendant promised to pay rupees therefor.
3. That he has not paid the same.

[Demand of judgment.]

No. 19.

FOR SERVICES AND MATERIALS AT A REASONABLE PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , plaintiff built a house [known as No. , in], and furnished the materials therefor, for the defendant, at his request; but no express agreement was made as to the price to be paid for such work and materials.
2. That the said work and materials were reasonably worth rupees.
3. That the defendant has not paid the same.

[Demand of judgment.]

No. 20.

FOR RENT RESERVED IN A LEASE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant entered into a contract with the plaintiff, under their hands, a copy of which is hereto annexed.

[Or state the substance of the contract.]

2. That the defendant has not paid the rent of the [month] ending on the day of 18 , amounting to rupees.

[Demand of judgment.]

Another Form.

1. That the plaintiff let to the defendant a house, No. 27, Chowringhee, for seven years, to hold from the day of 18 at rupees a year, payable quarterly.
2. That, of such rent, quarters are due and unpaid.

[Demand of judgment.]

No. 21.

FOR USE AND OCCUPATION AT A FIXED RENT.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant hired from the plaintiff [the house No. , Street], at the rent of rupees, payable on the first day of .
2. That the defendant occupied the said premises from the day of 18 to the day of 18 .
3. That the defendant has not paid rupees, being the part of said rent due on the first day of 18 .

[Demand of judgment.]

• No. 22.

FOR USE AND OCCUPATION AT A REASONABLE RENT.

(Title.)

A. B., the above-named plaintiff, executor of the will of *X. Y.*, deceased, states as follows:—

1. That the defendant occupied [the house, No. , Street], by permission of the said *X. Y.*, from the day of 18 , until the day of 18 , and no agreement was made as to payment for the use of the said premises.
2. That the use of the said premises for the said period was reasonably worth rupees.
3. That the defendant has not paid the same.
4. The plaintiff as such executor as aforesaid prays judgment for rupees.

No. 23.

FOR BOARD AND LODGING.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That from the day of 18 until the day of 18 , the defendant occupied certain rooms in the house [No. , Street], by permission of the plaintiff, and was furnished by the plaintiff, at his request, with meat, drink, attendance, and other necessaries.
2. That, in consideration thereof, the defendant promised to pay [or that no agreement was made as to payment for such meat, drink, attendance, or necessaries, but the same were reasonably worth] the sum of rupees.
3. That the defendant has not paid the same.

[Demand of judgment.]

No. 24.

FOR FREIGHT OF GOODS.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , plaintiff transported in [his barge, or *otherwise*] [one thousand barrels of flour, or sundry goods] from to , at the request of the defendant.
2. That the defendant promised to pay the plaintiff the sum of [one rupee per barrel] as freight thereon. [Or that no agreement was made as to payment for such transportation, but such transportation was reasonably worth rupees].
3. That the defendant has not paid the same.

[Demand of judgment.]

No. 25.

FOR PASSAGE-MONEY.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , plaintiff conveyed the defendant [in his ship, called the] from to at his request.
2. That the defendant promised to pay the plaintiff rupees therefor. [Or that no agreement was made as to the price of the said passage, but the said passage was reasonably worth rupees.]
3. That the defendant has not paid the same.

[Demand of judgment.]

No. 26.

ON AN AWARD.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the plaintiff and defendant, having a controversy between them concerning [a demand of the plaintiff for the price of ten barrels of oil, which the defendant refused to pay], agreed to submit the same to the award of E. F. and G. H., as arbitrators [or entered into an agreement, a copy of which is hereto annexed].
2. That on the day of 18 , at , the said arbitrators awarded that the defendant should [pay the plaintiff rupees].
3. That the defendant has not paid the same.

[Demand of judgment.]

[NOTE.—This will apply where the agreement to refer is not filed in Court.]

No. 27.

ON A FOREIGN JUDGMENT.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , in the State
[or Kingdom] of , the Court of that State [or King-
dom], in a suit therein pending between the plaintiff and the defend-
ant, duly adjudged that the defendant should pay to the plaintiff
rupees, with interest from the said date.

2. That the defendant has not paid the same.

[Demand of judgment.]

PLAINTS UPON INSTRUMENTS FOR THE PAYMENT
OF MONEY ONLY.

No. 28.

ON AN ANNUITY BOND.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defend-
ant by his bond became bound to the plaintiff in the sum of
rupees to be paid by the defendant to the plaintiff, subject to a condi-
tion that, if the defendant should pay to the plaintiff rupees
half-yearly on the day of and the day of in
every year during the life of the plaintiff, the said bond should be void.

2. That afterwards, on the day of 18 , the sum of
rupees for of the said half-yearly payments of the said
annuity became due to the plaintiff, and is still unpaid.

[Demand of judgment.]

No. 29.

PAYEE AGAINST MAKER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defend-
ant, by his promissory note, now overdue, promised to pay to the plaintiff
rupees [days] after date.

2. That he has not paid the same [except rupees, paid on
the day of 18].

[Demand of judgment.]

[NOTE.—Where the note is payable after notice, for paragraphs 1 and 2 substitute :—]

1. That on the day of 18 , at , the defendant, by his promissory note, promised to pay to the plaintiff rupees months after notice.

2. That notice was afterwards given by the plaintiff to the defendant to pay the same months after the said notice.

3. That the said time for payment has elapsed, but the defendant has not paid the same.

[Where the note is payable at a particular place, say—]

1. That on the day 18 , at , the defendant, by his promissory note, now overdue, promised to pay to the plaintiff [at Messrs. A. and Co.'s, Madras] rupees months after date.

2. That the said note was duly presented for payment [at Messrs. A. and Co.'s] aforesaid, but has not been paid.

Written Statement of the Defendant.

In the Court, &c.

U. D., the above-named defendant, states as follows:—

1. The defendant made the note sued upon under the following circumstances. The plaintiff and defendant had for some years been in partnership as indigo-manufacturers, and it had been agreed between them that they should dissolve partnership, that the plaintiff should retire from the business, that the defendant should take over the whole of the partnership-assets and liabilities, and should pay the plaintiff the value of his share in the assets after deducting the liabilities.

2. The plaintiff thereupon undertook to examine the partnership-books and enquire into the state of the partnership-assets and liabilities; and he did accordingly examine the said books and make the said enquiries, and he thereupon represented to the defendant that the assets of the firm exceeded Rs. 1,00,000, and that the liabilities of the firm were less than Rs. 30,000, whereas the fact was that the assets of the firm were less than Rs. 50,000, and the liabilities of the firm largely exceeded the assets.

3. The misrepresentations mentioned in the second paragraph of this statement induced the defendant to make the note now sued on, and there never was any other consideration for the making of such note.

No. 30.

FIRST INDORSEE AGAINST MAKER.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant, by his promissory note, now overdue, promised to pay to the order of *E. F.* [or to *E. F.* or order] rupees [days after date].

2. That the said *E. F.* indorsed the same to the plaintiff.

3. That the defendant has not paid the same.

[Demand of judgment.]

No. 31.

SUBSEQUENT INDORSEE AGAINST MAKER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. [*As in the last preceding form.*]
2. That the same was, by the indorsement of the said *E. F.* and of *G. H.* and *I. J.* [*or and others*] transferred to the plaintiff.
3. That the defendant has not paid the same.

[Demand of judgment.]

No. 32.

FIRST INDORSEE AGAINST FIRST INDORSER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That *E. F.*, on the day of 18 , at , by his promissory note, now overdue, promised to pay to the defendant or order rupees months after date.
2. That the defendant indorsed the same to the plaintiff.
3. That on the day of 18 , the same was duly presented for payment, but was not paid.

[Or state facts excusing want of presentment.]

4. That the defendant had notice thereof.
5. That he has not paid the same.

[Demand of judgment.]

No. 33.

SUBSEQUENT INDORSEE AGAINST FIRST INDORSER, THE INDORSEMENT BEING SPECIAL.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That the defendant indorsed to one *E. F.* a promissory note now overdue, made [*or purporting to have been made*] by one *G. H.*, on the day of 18 , at , to the order of the defendant, for the sum of rupees [*payable days after date.*]
2. That the same was, by the indorsement of the said *E. F.* [*and others*], transferred to the plaintiff. [*Or that the said E. F. indorsed the same to the plaintiff.*]

3, 4, and 5. [*Same as 3, 4, and 5 of the last preceding form.*]*[Demand of judgment.]*

No. 34.

SUBSEQUENT INDORSEE AGAINST HIS IMMEDIATE INDORSER.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That the defendant indorsed to him a promissory note, now overdue, made [or purporting to have been made] by one *E. F.*, on the day of 18, at , to the order of one *G. H.*, for the sum of rupees [payable days after date], and indorsed by the said *G. H.* to the defendant.

2, 3, and 4. [Same as in 3, 4, and 5 in Form No. 33.]

[Demand of judgment.]

No. 35.

SUBSEQUENT INDORSEE AGAINST INTERMEDIATE INDORSER.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That a promissory note, now overdue, made [or purporting to have been made] by one *E. F.*, on the day of 18, at , to the order of one *G. H.*, for the sum of rupees [payable days after date], and indorsed by the said *G. H.* to the defendant, was, by the indorsement of the defendant [and others], transferred to the plaintiff.

2, 3, and 4. [As in No. 33.]

[Demand of judgment.]

No. 36.

SUBSEQUENT INDORSEE AGAINST MAKER, AND FIRST AND SECOND INDORSER.

IN THE COURT OF AT .

Civil Suit No.

A. B., of
against
C. D., of
E. F., of
and
G. H., of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18, at , the defendant, *C. D.*, by his promissory note, now overdue, promised to pay to the order of the defendant, *E. F.*, rupees [months after date].

2. That the said *E. F.* indorsed the same to the defendant, *G. H.* who indorsed it to the plaintiff.

3. That on the day of 18, the same was presented, [or state facts excusing want of presentment] to the said *C. D.* for payment, but was not paid.

4. That the said *E. F.* and *G. H.* had notice thereof.
5. That they have not paid the same.

[*Demand of judgment.*]

No. 37.

DRAWER AGAINST ACCEPTOR.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , by his bill of exchange, now overdue, the plaintiff required the defendant to pay to him rupees [days after date, *or* sight, thereof].
2. That the defendant accepted the said bill. [*If the bill is payable at a certain time after sight, the date of acceptance should be stated, otherwise it is not necessary.*]
3. That he has not paid the same.
4. That by reason thereof the plaintiff incurred expenses in and about the presenting and noting of the bill, and incidental to the dishonour thereof.

[*Demand of judgment.*]

[NOTE.—Where the bill is payable to a third party, for paragraphs 1, 2, 3, say—]

1. That on &c., at &c., by his bill of exchange, now overdue, directed to the defendant, the plaintiff required the defendant to pay to *E. F.* or order rupees months after date.
2. That the plaintiff delivered the said bill to the said *E. F.* on .
3. That the defendant accepted the said bill, but did not pay the same, whereupon the same was returned to the plaintiff.

No. 38.

PAYEE AGAINST ACCEPTOR.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , the defendant accepted a bill of exchange, now overdue, made [*or* purporting to have been made] by one *E. F.*, on the day of 18 , at , requiring the defendant to pay to the plaintiff rupees after sight thereof.
2. That he has not paid the same.

[*Demand of judgment.*]

No. 39.

FIRST INDORSEE AGAINST ACCEPTOR.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , the defendant accepted a bill of exchange, now overdue, made [*or* purporting to have been made]

by one *E. F.*, on the day of 18 , at , requiring the defendant to pay to the order of one *G. H.* rupees after sight thereof.

2. That the said *G. H.* indorsed the same to the plaintiff.
3. That the defendant has not paid the same.

[*Demand of judgment.*]

No. 40.

SUBSEQUENT INDORSEE AGAINST ACCEPTOR.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. [*As in the last preceding form, to the end of article 1.*]
2. That by the indorsement of the said *G. H.* [and others], the same was transferred to the plaintiff.
3. That the defendant has not paid the same.

[*Demand of judgment.*]

No. 41.

PAYEE AGAINST DRAWER FOR NON-ACCEPTANCE.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant, by his bill of exchange, directed to *E. F.*, required the said *E. F.* to pay to the plaintiff rupees [days after sight].
2. That on the day of 18 , the same was duly presented to the said *E. F.* for acceptance, and was dishonoured.
3. That the defendant had due notice thereof.
4. That he has not paid the same.

[*Demand of judgment.*]

No. 42.

FIRST INDORSEE AGAINST FIRST INDORSER.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That the defendant indorsed to the plaintiff a bill of exchange, now overdue, made [or purporting to have been made] by one *E. F.*, on the day of , 18 , at , requiring one *G. H.* to pay to the order of the defendant rupees [days] after sight [or after date, or at sight] thereof, [and accepted by the said *G. H.* on the day of 18].
2. That on the day of 18 , the same was presented to the said *G. H.* for payment, and was dishonoured.

3. That the defendant had due notice thereof.
4. That he has not paid the same.

[Demand of judgment.]

No. 43.

SUBSEQUENT INDORSEE AGAINST FIRST INDORSER; THE INDORSE-
MENT BEING SPECIAL.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That the defendant indorsed to one *E. F.* a bill of exchange, now overdue, made [or purporting to have been made] by one *G. H.*, on the day of 18 , at , requiring one *I. J.* to pay to the order of the defendant rupees days after sight thereof [or otherwise], and accepted by the said *I. J.* on the day of 18 . [*This clause may be omitted, if not according to the fact.*]
2. That the same was, by the indorsement of the said *E. F.* [and others], transferred to the plaintiff.
3. That on the day of • 18 , the same was presented to the said *I. J.* for payment, and was dishonoured.
4. That the defendant had due notice thereof.
5. That he has not paid the same.

[Demand of judgment.]

No. 44.

SUBSEQUENT INDORSEE AGAINST HIS IMMEDIATE INDORSER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That the defendant indorsed to plaintiff a bill of exchange, now overdue, made [or purporting to have been made] by one *E. F.*, on the day of 18 , at , requiring one *G. H.* to pay to the order of *I. J.* rupees days after sight thereof [or otherwise], [accepted by the said *G. H.*], and indorsed by the said *I. J.* to the defendant.
2. That on the day of 18 , the same was presented to the said *G. H.* for payment, and was dishonoured.
3. That the defendant had due notice thereof.
4. That he has not paid the same.

[Demand of judgment.]

No. 45.

SUBSEQUENT INDORSEE AGAINST INTERMEDIATE INDORSER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That a bill of exchange, now overdue, made [or purporting to have been made] by one *E. F.*, on the day of 18 , at , requiring one *G. H.* to pay to the order of one *I. J.*

rupees days after sight thereof [*or otherwise*], [accepted by the said *G. H.*], and indorsed by the said *I. J.* to the defendant, was, by the indorsement of the defendant [and others], transferred to the plaintiff.

2. That on the day of 18 , the same was presented to the said *G. H.* for payment, and was dishonoured.

3. That the defendant had due notice thereof.

4. That he has not paid the same.

[*Demand of judgment.*]

No. 46.

INDORSEE AGAINST DRAWER, ACCEPTOR, AND INDORSER.

IN THE COURT OF , AT

Civil Suit No.

A. B., of

against

C. D., of

E. F., of

and

G. H., of

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant *C. D.*, by his bill of exchange, now overdue, directed to the defendant *E. F.*, required the said *E. F.*, to pay to the order of the defendant *G. H.*, rupees [days after sight thereof].

2. That on the day of 18 , the said *E. F.* accepted the same.

3. That the said *G. H.* indorsed the same to the plaintiff.

4. That on the day of 18 , the same was presented to the said *E. F.* for payment, and was dishonoured.

5. That the other defendants had due notice thereof.

6. That they have not paid the same.

[*Demand of judgment.*]

No. 47

PAYEE AGAINST DRAWER FOR NON-ACCEPTANCE OF A
FOREIGN BILL.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant, by his bill of exchange, drawn in Calcutta, required one *E. F.* to pay to the plaintiff in [London] pounds sterling [sixty days] after sight thereof.

2. That on the day of 18 , the same was presented to the said *E. F.* for acceptance, and was dishonoured, and was thereupon duly protested.

3. That the defendant had due notice thereof.

4. That he has not paid the same.

[5. That the value of pounds sterling, at the time of the service of notice of protest on the defendant, was rupees annas.]

Wherefore the plaintiff demands judgment against the defendant for rupees, with [ten per centum] compensation and interest from the day of 18 .

No. 48.

PAYEE AGAINST ACCEPTOR.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , one E. F., by his bill of exchange, now overdue, directed to the defendant, required the defendant to pay to the plaintiff rupees after date [or days after sight] thereof.

2. That on the day of 18 , the defendant accepted the said bill.

3. That he has not paid the same.

[Demand of judgment.]

No. 49.

ON A MARINE [OPEN] POLICY ON VESSEL LOST BY PERILS OF THE SEA, &C.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff was the owner of [or had an interest in] the ship at the time of her loss, as hereinafter mentioned.

2. That on the day of 18 , at , the defendants, in consideration of rupees to them paid [or which the plaintiff then promised to pay], executed to him a policy of insurance upon the said ship, a copy of which is hereto annexed; [or whereby they promised to pay to the plaintiff, within days after proof of loss and interest, all loss and damage accruing to him by reason of the destruction or injury of the said ship, during her next voyage from to , whether by perils of the sea or by fire, or by other causes therein mentioned, not exceeding rupees].

3. That the said ship, while proceeding on the voyage mentioned in the said policy, was, on the day of 18 , totally lost by the perils of the sea [or otherwise].

4. That the plaintiff's loss thereby was rupees.

5. That on the day of 18 , he furnished the defendants with proof of his loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

6. That the defendants have not paid the said loss.

[*Demand of judgment.*]

No. 50.

ON CARGO LOST BY FIRE :—VALUED POLICY.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That plaintiff was the owner of [or had an interest in] [one hundred bales of cotton] on board the ship at the time of her loss, as hereinafter mentioned.

2. That on the day of 18 , at , the defendants, in consideration of rupees which the plaintiff then paid [or promised to pay], executed to him a policy of insurance upon the said goods, a copy of which is hereto annexed ; [or, whereby they promised to pay to the plaintiff rupees in case of the total loss, by fire or other causes mentioned, of the said goods before their landing at ; or, in case of partial loss, such damage as the plaintiff might sustain thereby, provided the same should not exceed per centum of the whole value of the goods].

3. That on the day of 18 , at , while proceeding on the voyage mentioned in the said policy, the said goods were totally destroyed by fire, (or as the case may be).

4, 5, and 6. [*As in paragraphs 4, 5, and 6 of the last preceding form.*]

[*Demand of judgment.*]

No. 51.

ON FREIGHT :—VALUED POLICY.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That the plaintiff had an interest in the freight to be earned by the ship on her voyage from to , at the time of her loss, as hereinafter mentioned, and that a large quantity of goods was shipped upon freight in her at that time.

2. That on the day of 18 , at , the defendant, in consideration of rupees to him paid, executed to the plaintiff a policy of insurance upon the said freight, a copy of which is hereto annexed [*or state its tenor, as before*].

3. That the said ship, while proceeding upon the voyage mentioned in the said policy, was, on the day of 18 , totally lost by [the perils of the sea].

4. That the plaintiff has not received any freight from the said ship, nor did she earn any on the said voyage, by reason of her loss as aforesaid.

5 and 6. [*As in Form No. 49.*]

[*Demand of judgment.*]

No. 52.

FOR A LOSS BY GENERAL AVERAGE.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That plaintiff was the owner of [*or had an interest in*] [one hundred bales of cotton] shipped on board a vessel called the Y. Z., from to , at the time of the loss hereinafter mentioned.

2. That on the day of 18 , at , in consideration of rupees [which the plaintiff then promised to pay], the defendant executed to the plaintiff a policy of insurance upon his said goods, a copy of which is hereto annexed [*or state its tenor, as before*].

3. That on the day of 18 , while proceeding on the voyage mentioned in the said policy, the said vessel was so endangered by perils of the sea, that the master and crew thereof were compelled to, and did, cast into the sea a large part of her rigging and furniture.

4. That the plaintiff was, by reason thereof, compelled to, and did, pay a general average loss of rupees.

5. That on the day of 18 , he furnished the defendant with proof of his loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

6. That the defendant has not paid the said loss.

[*Demand of judgment.*]

No. 53.

FOR A PARTICULAR AVERAGE LOSS.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1 and 2. [*As in the last preceding form.*]

3. That on the day of 18 , while on the high seas, the sea-water broke into the said ship, and damaged the said [cotton] to the amount of rupees.

4 and 5. [*As in paragraphs 5 and 6 of the last preceding form.*]

[*Demand of judgment.*]

No. 54.

ON A FIRE INSURANCE POLICY.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That plaintiff [was the owner of, *or*] had an interest in a [dwelling-house, known as No. , Street, in the city of], at the time of its destruction [*or injury*] by fire as hereinafter mentioned.

2. That on the day of 18 , at , in consideration of rupees [to them paid], the defendants executed to the plaintiff a policy of insurance on the said [premises], a copy of which is hereto annexed [*or state its tenor*].

3. That on the day of 18 , the said [dwelling-house] was totally destroyed [*or greatly damaged*] by fire.

4. That the plaintiff's loss thereby was rupees.

5. That on the day of 18 , he furnished the defendant with proof of his said loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

6. That the defendants have not paid the said loss.

[*Demand of judgment.*]

No. 55.

AGAINST SURETY FOR PAYMENT OF RENT.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , one E. F. hired from the plaintiff, for the term of years, the [house No. , Street], at the annual rent of rupees, payable [monthly].

2. That [at the same time and place] the defendant agreed, in consideration of the letting of the said premises to the said E. F., to guarantee the punctual payment of the said rent.

3. That the rent aforesaid for the month of 18 , amounting to rupees, has not been paid.

[*If, by the terms of the agreement, notice is required to be given to the surety, add:—*]

4. That on the day of 18 , the plaintiff gave notice to the defendant of the non-payment of the said rent, and demanded payment thereof.

5. That he has not paid the same.

[*Demand of judgment.*]

B.—PLAINTS FOR COMPENSATION FOR BREACH OF CONTRACT.

No. 56.

FOR BREACH OF AGREEMENT TO CONVEY LAND.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the plaintiff and defendant entered into an agreement, under their hands, of which a copy is hereto annexed.

[Or, That on, &c., the defendant agreed with the plaintiff that, in consideration of a deposit of rupees then paid, and of the further sum of [ten thousand] rupees payable as hereinafter mentioned, he would, on the day of 18 , at , execute to the plaintiff a sufficient conveyance of [the house No. , Street, in the city of , free from all incumbrances; and the plaintiff agreed to pay [ten thousand] rupees for the same on delivery thereof.]

2. That on the day of 18 , the plaintiff demanded the conveyance of the said property from the defendant, and tendered rupees to the defendant [or that all conditions were fulfilled, and all things happened, and all times elapsed, necessary to entitle the plaintiff to have the said agreement performed by the defendant on his part].

3. That the defendant has not executed any conveyance of the said property to the plaintiff [or that there is a mortgage upon the said property, made by to , for rupees, registered in the office of , on the day of 18 , and still unsatisfied, or any other defect of title].

4. That the plaintiff has thereby lost the use of the money paid by him as such deposit as aforesaid and of other moneys provided by him for the completion of the said purchase, and has lost the expenses incurred by him in investigating the title of the defendant and in preparing to perform the agreement on his part, and has incurred expense in endeavouring to procure the performance thereof by the defendant.

5. The plaintiff prays judgment for rupees compensation.

No. 57.

FOR BREACH OF AGREEMENT TO PURCHASE LAND.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the plaintiff and defendant entered into an agreement, under their hands, of which a copy is hereto annexed.

[Or, That on the day of 18 , at , the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant, and that the defendant should purchase from the plaintiff, forty bighás of land in the village of for rupees.]

2. That on the day of 18 , at , the plaintiff, being then the absolute owner of the said property [and the same being free from all incumbrances, as was made to appear to the defendant], tendered to the defendant a sufficient instrument of conveyance of the same [or was ready and willing, and offered, to convey the same to the defendant by a sufficient instrument], on the payment by the defendant of the said sum.

3. That the defendant has not paid the same.

[Demand of judgment.]

No. 58.

Another Form.

FOR NOT COMPLETING A PURCHASE OF IMMOVEABLE PROPERTY.

*(Title.)**A. B.*, the above-named plaintiff, states as follows:—

1. That by an agreement dated the day of 18 , it was agreed by and between the plaintiff and the defendant that the plaintiff should sell to the defendant and the defendant should purchase from the plaintiff a house and land at the price of rupees, upon the terms and conditions following (that is to say)—

(a) That the defendant should pay the plaintiff a deposit of rupees in part of the said purchase-money on the signing of the said agreement, and the remainder on the day of 18 , on which day the said purchase should be completed.

(b) That the plaintiff should deduce and make a good title to the said premises on or before the day of 18 , and on payment of the said remainder of the said purchase-money as aforesaid should execute to the defendant a proper conveyance of the said premises, to be prepared at the defendant's expense.

2. That all conditions were fulfilled, and all things happened, and all times elapsed, necessary to entitle the plaintiff to have the said agreement performed by the defendant on his part, yet the defendant did not pay the plaintiff the remainder of the said purchase-money as aforesaid on his part.

3. That the plaintiff has thereby lost the expense which he incurred in preparing to perform the said agreement on his part, and has been put to expense in endeavouring to procure the performance thereof by the defendant.

[Demand of judgment.]

No. 59.

FOR NOT DELIVERING GOODS SOLD.

*(Title.)**A. B.*, the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the plaintiff and defendant mutually agreed that the defendant should deliver [one hundred barrels of flour] to the plaintiff [on the day of 18], and that the plaintiff should pay therefor rupees on delivery.

2. That on the [said] day the plaintiff was ready and willing, and offered, to pay the defendant the said sum upon delivery of the said goods.

3. That the defendant has not delivered the same, whereby the plaintiff has been deprived of the profits which would have accrued to him from such delivery.

[Demand of judgment.]

No. 60.

FOR BREACH OF CONTRACT TO EMPLOY.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the plaintiff and defendant mutually agreed that the plaintiff should serve the defendant as [an accountant, or in the capacity of foreman, or as the case may be], and that the defendant should employ the plaintiff, as such, for the term of [one year], and pay him for his services rupees [monthly].

2. That on the day of 18 , the plaintiff entered upon the service of the defendant as aforesaid, and has ever since been, and still is, ready and willing to continue in such service during the remainder of the said year, whereof the defendant always had notice.

3. That on the day of 18 , the defendant wrongfully discharged the plaintiff, and refused to permit him to serve as aforesaid, or to pay him for his services.

[Demand of judgment.]

No. 61.

FOR BREACH OF CONTRACT TO EMPLOY, WHERE THE EMPLOYMENT NEVER TOOK EFFECT.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. [As in the last preceding form.]

2. That on the day of 18 , at , the plaintiff offered to enter upon the service of the defendant, and has ever since been ready and willing so to do.

3. That the defendant refused to permit the plaintiff to enter upon such service, or to pay him for his services.

[Demand of judgment.]

No. 62.

FOR BREACH OF CONTRACT TO SERVE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the plaintiff and defendant mutually agreed that the plaintiff should employ the defendant at an [annual] compensation of rupees, and that the defendant should serve the plaintiff as [an artist] for the term of [one year].

2. That the plaintiff has always been ready and willing to perform his part of the said agreement [and on the day of 18 , offered so to do].

3. That the defendant [entered upon] the service of the plaintiff on the above-mentioned day, but afterwards, on the day of 18 , he refused to serve the plaintiff as aforesaid.

[*Demand of judgment.*]

No. 63.

AGAINST A BUILDER FOR DEFECTIVE WORKMANSHIP.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the plaintiff and defendant entered into an agreement, of which a copy is hereto annexed.

[*Or state the tenor of the contract.*]

[2. That the plaintiff duly performed all the conditions of the said agreement on his part.]

3. That the defendant [built the house referred to in the said agreement in a bad and unworkmanlike manner].

[*Demand of judgment.*]

No. 64.

BY THE MASTER AGAINST THE FATHER OR GUARDIAN
OF AN APPRENTICE.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant entered into an agreement, under his hand and seal,* a copy of which is hereto annexed.

[*Or state the tenor of the contract.*]

2. That after the making of the said agreement the plaintiff received the said [*apprentice*] into his service as such apprentice for the term aforesaid, and has always performed, and been ready and willing to perform, all things in the said agreement on his part to be performed.

3. That on the day of 18 , the said [*apprentice*] wilfully absented himself from the service of the plaintiff, and continues so to do.

[*Demand of judgment.*]

* The form given in Act XIX. of 1850 requires the seal of the father or guardian.

No. 65.

BY THE APPRENTICE AGAINST THE MASTER.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant entered into an agreement with the plaintiff and his [father], *E. F.*, under their hands and seals, a copy of which is hereto annexed.

2. That after the making of the said agreement the plaintiff entered into the service of the defendant with him after the manner of an apprentice to serve for the term mentioned in the said agreement, and has always preformed all things in the said agreement contained on his part to be performed.

3. That the defendant has not instructed the plaintiff in the business of , [or state any other breach, such as cruelty, failure to provide sufficient food, or other ill-treatment].

[Demand of judgment.]

No. 66.

ON A BOND FOR THE FIDELITY OF A CLERK.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , plaintiff employed one *E. F.* as a clerk.

2. That on the day of 18 , at , the defendant agreed with the plaintiff, that if the said *E. F.* should not faithfully perform his duties as a clerk to the plaintiff, or should fail to account to the plaintiff for all moneys, evidences of debt, or other property received by him for the use of the plaintiff, the defendant would pay to the plaintiff whatever loss he might sustain by reason thereof, not exceeding rupees.

[Or, 2. That at the same time and place, the defendant bound himself to the plaintiff, by a writing under his hand, in the penal sum of rupees, conditioned that if the said *E. F.* should faithfully perform his duties as clerk and cashier to the plaintiff, and should justly account to the plaintiff for all moneys, evidences of debt, or other property which should be at any time held by him in trust for the plaintiff, the same should be void, but not otherwise.]

[Or, 2. That at the same time and place, the defendant executed to the plaintiff a bond, a copy of which is hereto annexed.]

3. That between the day of 18 , and the day of 18 , the said *E. F.* received money and other property, amounting to the value of rupees, for the use of the plaintiff, for which he has not accounted to him, and the same still remains due and unpaid.

[Demand of judgment.]

No. 67.

BY TENANT AGAINST LANDLORD WITH SPECIAL DAMAGE.

*(Title.)**A. B.*, the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant, by an instrument in writing, let to the plaintiff [the house No. Street] for the term of years, contracting with the plaintiff that he, the plaintiff, and his legal representatives, should quietly enjoy possession thereof for the said term.

2. That all conditions were fulfilled and all things happened necessary to entitle the plaintiff to maintain this suit.

3. That on the day of , during the said term, one *E. F.*, who was the lawful owner of the said house, lawfully evicted the plaintiff therefrom, and still withholds the possession thereof from him.

4. That the plaintiff was thereby [prevented from continuing the business of a tailor at the said place, was compelled to expend rupees in moving, and lost the custom of *G. H.* and *I. J.* by such removal].

[Demand of judgment.]

No. 68.

FOR BREACH OF WARRANTY OF MOVEABLES.

*(Title.)**A. B.*, the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant warranted a steam-engine to be in good working order, and thereby induced the plaintiff to purchase the same of him, and to pay him rupees therefor.

2. That the said engine was not then in good working order, whereby the plaintiff incurred expense in having the said engine repaired, and lost the profits which could otherwise have accrued to him while the engine was under repair.

[Demand of judgment.]

No. 69.

ON AN AGREEMENT OF INDEMNITY.

*(Title.)**A. B.*, the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant, being partners in trade under the firm of *A. B.* and *C. D.*, dissolved the said partnership, and mutually agreed that the defendant should take and keep all the partnership-property, pay all debts of the firm, and indemnify the plaintiff against all claims that might be made upon him on account of any indebtedness of the said firm.

2. That the plaintiff duly performed all the conditions of the said agreement on his part.

3. That on the day of 18 , [a judgment was recovered against the plaintiff and defendant by one *E. F.*, in the High Court of Judicature at , upon a debt due from the said firm to the said *E. F.*, and on the day of 18], the plaintiff paid rupees [in satisfaction of the same].

4. That the defendant has not paid the same to the plaintiff.

[*Demand of judgment.*]

No. 70.

BY SHIP-OWNER AGAINST FREIGHTOR FOR NOT LOADING.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the plaintiff and defendant entered into an agreement, a copy of which is hereto annexed.

[*Or*, 1. That on , at , the plaintiff and defendant agreed by charter-party that the defendant should deliver to the plaintiff's ship at , on the day of 18 , five hundred tons of merchandise, which she should carry to , and there deliver, on payment of freight; and that the defendant should have days for loading, days for discharge, and days for demurrage, if required, at rupees per day.]

2. That at the time fixed by the said agreement the plaintiff was ready and willing, and offered, to receive [the said merchandise, *or* the merchandise mentioned in the said agreement] from the defendant.

3. That the period allowed for loading and demurrage has elapsed, but the defendant has not delivered the said merchandise to the said vessel.

Wherefore the plaintiff demands judgment for rupees for demurrage and rupees additional for compensation.

C.—PLAINTS FOR COMPENSATION UPON WRONGS.

No. 71.

FOR TRESPASS ON LAND.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

That on the day of 18 , at , the defendant entered upon certain land of the plaintiff known as [and depastured the same with cattle, trod down the grass, cut the timber, and otherwise injured the same].

[*Demand of judgment.*]

No. 72.

FOR TRESPASS IN ENTERING A DWELLING-HOUSE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That the defendant entered a dwelling-house of the plaintiff called _____, and made a noise and disturbance therein for a long time, and broke open the doors of the said dwelling-house, and removed, took, and carried away the fixtures and goods of the plaintiff therein, and disposed of the same to the defendant's own use, and expelled the plaintiff and his family from the possession of the said dwelling-house, and kept them so expelled for a long time.

2. That the plaintiff was thereby prevented from carrying on his business, and incurred expense in procuring another dwelling-house for himself and family.

[Demand of judgment.]

No. 73.

FOR TRESPASS ON MOVEABLES.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the _____ day of _____ 18____, at _____, the defendant broke open ten barrels of rum belonging to the plaintiff, and emptied their contents into the street [or seized and took the plaintiff's goods, that is to say, iron, rice, and household furniture, or *as the case may be*, and carried away the same, and disposed of them to his own use]:

[or seized and took the plaintiff's cows and bullocks, and impounded them, and kept them impounded for a long time.]

2. That the plaintiff was thereby deprived of the use of the cows and bullocks during that time, and incurred expense in feeding them and in getting them restored to him; and was also prevented from selling them at _____ fair, as he otherwise would have done, and the said cows and bullocks are diminished in value to the plaintiff [*otherwise state the injury according to the facts*].

[Demand of judgment.]

No. 74.

FOR THE CONVERSION OF MOVEABLE PROPERTY.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the _____ day of _____ 18____, plaintiff was in possession of certain goods described in the schedule hereto annexed [or of one thousand barrels of flour].

2. That on that day, at _____, the defendant converted the same to his own use, and wrongfully deprived the plaintiff of the use and possession of the same.

[Demand of judgment.]

The Schedule.

No. 75.

AGAINST A WAREHOUSEMAN FOR REFUSAL TO DELIVER GOODS.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant, in consideration of the payment to him of rupees [or rupees per barrel, per month, &c.], agreed to keep in his godown [one hundred barrels of flour], and to deliver the same to the plaintiff on payment of the said sum.

2. That thereupon the plaintiff deposited with the defendant the said [hundred barrels of flour].

3. That on the day of 18 , the plaintiff requested the defendant to deliver the said goods, and tendered him rupees [or the full amount of storage due thereon], but the defendant refused to deliver the same.

4. That the plaintiff was thereby prevented from selling the said goods to *E. F.*, and the same are lost to the plaintiff.

[Demand of judgment.]

No. 76.

FOR PROCURING PROPERTY BY FRAUD.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant, for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he, the defendant, was solvent, and worth rupees over all his liabilities].

2. That the plaintiff was thereby induced to sell [and deliver] to the defendant [dry goods] of the value of rupees.

3. That the said representations were false [or state the particular falsehoods], and were then known by the defendant to be so.

4. That the defendant has not paid for the said goods. [Or, if the goods were not delivered, That the plaintiff, in preparing and shipping the said goods and procuring their restoration, expended rupees.]

[Demand of judgment.]

No. 77.

FOR FRAUDULENTLY PROCURING CREDIT TO BE GIVEN TO
ANOTHER PERSON.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant represented to the plaintiff that one *E. F.* was solvent and in good credit, and worth rupees over all his liabilities [or that *E. F.* then held a responsible situation, and was in good circumstances, and might safely be trusted with goods on credit].

2. That the plaintiff was thereby induced to sell to the said *E. F.* [rice] of the value of rupees [on month's credit].

3. That the said representations were false, and were then known by the defendant to be so, and were made by him with intent to deceive and defraud the plaintiff [or to deceive and injure the plaintiff].

4. That the said *E. F.* [did not pay for the said goods at the expiration of the credit aforesaid, or] has not paid for the said rice, and the plaintiff has wholly lost the same by reason of the premises.

[*Demand of judgment.*]

No. 78.

FOR POLLUTING THE WATER UNDER THE PLAINTIFF'S LAND.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That he is, and at all the times hereinafter mentioned was, possessed of certain land called , and situate in , and of a well therein, and of water in the said well, and was entitled to the use and benefit of the said well and of the said water therein, and to have certain springs and streams of water which flowed and ran into the said well to supply the same to flow or run without being fouled or polluted.

2. That on the day of 18 , the defendant wrongfully fouled and polluted the said well and the said water therein and the said springs and streams of water which flowed into the said well.

3. That by reason of the premises the said water in the said well became impure and unfit for domestic and other necessary purposes, and the plaintiff and his family are deprived of the use and benefit of the said well and water.

[*Demand of judgment.*]

No. 79.

FOR CARRYING ON A NOXIOUS MANUFACTURE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That the plaintiff is, and at all the times hereinafter mentioned was, possessed of certain lands called situate in .

2. That ever since the day of 18 , the defendant has wrongfully caused to issue from certain smelting works carried on by the defendant large quantities of offensive and unwholesome smoke and other vapours and noxious matter, which spread themselves over and upon the said lands, and corrupted the air, and settled on the surface of the said lands.

3. That thereby the trees, hedges, herbage, and crops of the plaintiff growing on the said lands, were damaged and deteriorated in value, and the cattle and live-stock of the plaintiff on the said lands became unhealthy, and divers of them were poisoned and died.

4. That, by reason of the premises, the plaintiff was unable to depasture the said lands with cattle and sheep as he otherwise might have done, and was obliged to remove his cattle, sheep, and farming-stock therefrom, and has been prevented from having so beneficial and healthy a use and occupation of the said lands as he otherwise would have had.

[Demand of judgment.]

No. 80.

FOR OBSTRUCTING A WAY.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That the plaintiff is, and at the time hereinafter mentioned was, possessed of [a house in the village of _____].

2. That he was entitled to a right of way from the said [house] over a certain field to a public highway and back again from the said highway over the said field to the said house, for himself and his servants [with vehicles, or on foot] at all times of the year.

3. That on the _____ day of _____ 18____, defendant wrongfully obstructed the said way, so that the plaintiff could not pass [with vehicles, or on foot, or in any manner] along the said way, [and has ever since wrongfully obstructed the same].

4. *[State special damage, if any.]*

[Demand of judgment.]

Another Form.

1. That the defendant wrongfully dug a trench and heaped up earth and stones in the public highway leading from _____ to _____ so as to obstruct it.

2. That thereby the plaintiff, while lawfully passing along the said highway, fell over the said earth and stones [or into the said trench], and broke his arm, and suffered great pain, and was prevented from attending to his business for a long time, and incurred expense for medical attendance.

[Demand of judgment.]

No. 81.

FOR DIVERTING A WATER-COURSE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That the plaintiff is, and at the time hereinafter mentioned was, possessed of a mill situated on a [stream] known as the _____, in the village of _____, district of _____.

2. That by reason of such possession the plaintiff was entitled to the flow of the said stream for working the said mill.

3. That on the _____ day of _____ 18____, the defendant, by cutting the bank of the said stream, wrongfully diverted the water thereof, so that less water ran into the plaintiff's mill.

4. That, by reason thereof, the plaintiff has been unable to grind more than sacks per day, whereas, before the said diversion of water, he was able to grind sacks per day.

[Demand of judgment.]

No. 82.

FOR OBSTRUCTING A RIGHT TO USE WATER FOR IRRIGATION.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That the plaintiff is, and was at the time hereinafter mentioned, possessed of certain lands, situate, &c., and entitled to take and use a portion of the water of a certain stream for irrigating the said lands.

2. That on the day of the defendant prevented the plaintiff from taking and using the said portion of the said water as aforesaid, by wrongfully obstructing and diverting the said stream.

[Demand of judgment.]

No. 83.

FOR WASTE BY A LESSEE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , the defendant hired from him [the house No. , Street] for the term of .

2. That the defendant occupied the same under such hiring.

3. That during the period of such occupation, the defendant greatly injured the premises [defaced the walls, tore up the floors, and broke down doors; or otherwise specify the injuries as far as possible].

The plaintiff prays judgment for rupees compensation.

No. 84.

FOR ASSAULT AND BATTERY.

(Title.)

A. B., the above-named plaintiff, states as follows:—

That on the day of 18 , at , the defendant assaulted and beat him .

The plaintiff prays judgment for rupees compensation.

No. 85.

FOR ASSAULT AND BATTERY, WITH SPECIAL DAMAGE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant assaulted and beat him until he became insensible.

2. That the plaintiff was thereby disabled from attending to his business for [six weeks thereafter], and was compelled to pay rupees for medical attendance, and has been ever since disabled [from using his right arm]. [*Or otherwise state the damage, as the case may be.*]

[*Demand of judgment.*]

No. 86.

FOR ASSAULT AND FALSE IMPRISONMENT.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant assaulted the plaintiff and imprisoned him for days [or hours] ; [*state special damage, if any, thus :—*]

2. That by reason thereof the plaintiff suffered great pain of body and mind, and was exposed and injured in his credit and circumstances, and was prevented from carrying on his business and from providing for his family by his personal care and attention, and incurred expense in obtaining his liberation from the said imprisonment [*or otherwise, as the case may be.*]

[*Demand of judgment.*]

No. 87.

FOR INJURIES CAUSED BY NEGLIGENCE ON A RAILROAD.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , the defendants were common carriers of passengers by railway between and .

2. That on that day the plaintiff was a passenger in one of the carriages of the defendants on the said road.

3. That while he was such passenger, at [or near the station of ; or between the stations of and], a collision occurred on the said railway, caused by the negligence and unskilfulness of the defendants' servants, whereby the plaintiff was much injured [having his leg broken, his head cut, &c., and state the special damage, if any, as], and incurred expense for medical attendance, and is permanently disabled from carrying on his former business as [a salesman].

[*Demand of judgment.*]

[*Or thus :—* 2. That on that day the defendants by their servants so negligently and unskilfully drove and managed an engine and a train of carriages attached thereto upon and along the defendants' railway which the plaintiff was then lawfully crossing, that the said engine and train were driven and struck against the plaintiff, whereby, &c., as in § 3.]

No. 88.

FOR INJURIES CAUSED BY NEGLIGENT DRIVING.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1/ The plaintiff is a shoemaker, carrying on business at .
The defendant is a merchant of .

2. On the [23rd May 1875], the plaintiff was walking eastward along Chowringhee, in the city of Calcutta, at about 3 o'clock in the afternoon. He was obliged to cross Harrington Street, which is a street running into Chowringhee at right angles. While he was crossing this street, and just before he could reach the foot-pavement on the further side thereof, a carriage of the defendant's, drawn by two horses, under the charge and control of the defendant's servants, was negligently, suddenly, and without any warning, turned at a rapid and dangerous pace out of Harrington Street into Chowringhee. The pole of the carriage struck the plaintiff and knocked him down, and he was much trampled by the horses.

3. By the blow and fall and trampling the plaintiff's left arm was broken, and he was bruised and injured on the side and back, as well as internally, and in consequence thereof the plaintiff was for four months ill and in suffering, and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.

The plaintiff claims rupees damages.

(Title.)

Written Statement of Defendant.

1. The defendant denies that the carriage mentioned in the plaint was the defendant's carriage, or that it was under the charge or control of the defendant's servants. The carriage belonged to [Messrs. *E. F.* and *G. H.*] of Street, Calcutta, livery stable-keepers, employed by the defendant to supply him with carriages and horses; and the person under whose charge and control the said carriage was, was the servant of the said [Messrs. *E. F.* and *G. H.*]

2. The defendant does not admit that the said carriage was turned out of Harrington Street either negligently, suddenly, or without warning, or at a rapid or dangerous pace.

3. The defendant says that the plaintiff might and could, by the exercise of reasonable care and diligence, have seen the said carriage approaching him, and avoided any collision with it.

4. The defendant does not admit the statements of the third paragraph of the plaint.

No. 89.

FOR LIBEL; THE WORDS BEING LIBELLOUS IN THEMSELVES.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant published in a newspaper, called the [or in a letter addressed to *E. F.*], the following words concerning the plaintiff:—

[Set forth the words used.]

2. That the said publication was false and malicious.

[Demand of judgment.]

NOTE.—If the libel was in a language not the language of the Court, set out the libel *verbatim* in the foreign language in which it was published, and then proceed thus:—"Which said words, being translated into the language, have the meaning and effect following, and were so understood by the persons to whom they were so published, that is to say [here set out a literal translation of the libel in the language of the Court.]"

No. 90.

FOR LIBEL : THE WORDS NOT BEING LIBELLOUS IN THEMSELVES.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That the plaintiff [is, and] was, on and before the day of 18 , a merchant doing business in the city of .

2. That on the day of 18 , at , the defendant published in a newspaper, called the [or in a letter addressed to E. F., or otherwise how published], the following words concerning the plaintiff:—

["A. B. of this city has modestly retired to foreign lands. It is said that creditors to the amount of rupees are anxiously seeking his address."]

3. That the defendant meant thereby that [the plaintiff had absconded to avoid his creditors, and with intent to defraud them].

4. That the said publication was false and malicious.

[Demand of judgment.]

No. 91.

FOR SLANDER ; THE WORDS BEING ACTIONABLE IN THEMSELVES.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant falsely and maliciously spoke, in the hearing of E. F. [or sundry persons], the following words concerning the plaintiff: ["He is a thief."]

2. That, in consequence of the said words, the plaintiff lost his situation as in the employ of .

[Demand of judgment.]

No. 92.

FOR SLANDER ; THE WORDS NOT BEING ACTIONABLE IN THEMSELVES.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant falsely and maliciously said to one E. F. concerning the plaintiff: ["He is a young man of remarkably easy conscience"].

2. That the plaintiff was then seeking employment as a clerk, and the defendant meant, by the said words, that the plaintiff was not trustworthy as a clerk.

3. That in consequence of the said words [the said *E. F.* refused to employ the plaintiff as a clerk].

[*Demand of judgment.*]

No. 93.

FOR MALICIOUS PROSECUTION.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant obtained a warrant of arrest from [a magistrate of the said city, *or, as the case may be*] on a charge of , and the plaintiff was arrested thereon, and imprisoned for or hours, and gave bail in the sum of rupees to obtain his release].

2. That, in so doing, the defendant acted maliciously and without reasonable or probable cause.

3. That on the day of 18 , the said magistrate dismissed the complaint of the defendant, and acquitted the plaintiff.

4. That many persons, whose names are unknown to the plaintiff, hearing of the said arrest, and supposing the plaintiff to be a criminal, have ceased to do business with him; *or*, that, in consequence of the said arrest, the plaintiff lost his situation as clerk to one *E. F.*; *or*, that by reason of the premises the plaintiff suffered pain of body and mind, and was prevented from transacting his business, and was injured in his credit, and incurred expense in obtaining his release from the said imprisonment and in defending himself against the said complaint.

[*Demand of judgment.*]

D.—PLAINTS IN SUITS FOR SPECIFIC PROPERTY.

No. 94.

BY THE ABSOLUTE OWNER FOR THE POSSESSION OF
IMMOVEABLE PROPERTY.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That *X. Y.* was the absolute owner [of the estate, *or* the share of the estate, called , situate in the district of , the Government-revenue of which is rupees and the estimated value rupees, *or* of the house No. Street, in the town of Calcutta, the estimated value of which is rupees].

2. That on the day of 18 , *Z.* illegally dispossessed the said *X. Y.* of the said estate [*or* share, *or* house].

3. That the said *X. Y.* has since died intestate, leaving the plaintiff, the said *A. B.*, his heir him surviving.

4. That the defendant withholds the possession of the estate [or share or house] from the plaintiff.

The plaintiff prays judgment:

- (1) for the possession of the said premises;
- (2) for rupees compensation for withholding the same.

Another Form.

A. B., the above-named plaintiff, states as follows:—

1. On the day of , the plaintiff, by an instrument in writing, let to the defendant a house and premises [No. 52, Russell Street, in the] for a term of five years from the day of , at the monthly rent of 300 rupees.

2. By the said instrument the defendant covenanted to keep the said house and premises in good and tenantable repair.

3. The said instrument also contained a clause of re-entry, entitling the plaintiff to re-enter upon the said house and premises, in case the rent thereby reserved, whether demanded or not, should be in arrear for twenty-one days, or in case the defendant should make default in the performance of any covenant upon his part to be performed.

4. On the day of 18 , a month's rent became due, and on the day of 18 , another month's rent became due; on the day of 18 , both had been in arrear for twenty-one days, and both are still due.

5. On the same day of 18 , the house and premises were not and are not now in good or tenantable repair, and it would require the expenditure of a large sum of money to reinstate the same in good and tenantable repair, and the plaintiff's reversion is much depreciated in value. The plaintiff claims

- (1) possession of the said house and premises;
- (2) rupees for arrears of rent;
- (3) rupees compensation for the defendant's breach of his covenant to repair;
- (4) rupees for the occupation of the house and premises from the day of 18 , to the day of recovering possession.

No. 95.

BY THE TENANT.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That one *E. F.* is the absolute owner of [a piece of land in the town of Calcutta , bounded as follows:], the estimated value of which is rupees .

2. That on the day of 18 , the said *E. F.* let the said premises to the plaintiff for years, from .

3. That the defendant withholds the possession thereof from the plaintiff.

[Demand of judgment.]

F

No. 96.

FOR MOVEABLE PROPERTY WRONGFULLY TAKEN.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , plaintiff owned [or was possessed of] one hundred barrels of flour, the estimated value of which is rupees.

2. That on that day, at , the defendant took the same.

The plaintiff prays judgment:

(1) for the possession of the said goods, or for rupees, in case such possession cannot be had;

(2) for rupees compensation for the detention thereof.

No. 97.

FOR MOVEABLES WRONGFULLY DETAINED.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , plaintiff owned [or state facts showing a right to the possession] the goods mentioned in the schedule hereto annexed [or describe the goods], the estimated value of which is rupees.

2. That from that day until the commencement of this suit, the defendant has detained the same from the plaintiff.

3. That before the commencement of this suit, to wit, on the day of 18 , the plaintiff demanded the same from the defendant, but he refused to deliver them.

The plaintiff prays judgment:

(1) for the possession of the said goods, or for rupees, in case such possession cannot be had;

(2) for rupees compensation for the detention thereof.

The schedule.

No. 98.

AGAINST A FRAUDULENT PURCHASER AND HIS TRANSFEREE WITH NOTICE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant [*C. D.*], for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he was solvent, and worth rupees over all his liabilities].

2. That the plaintiff was thereby induced to sell and deliver to the said *C. D.* [one hundred boxes of tea], the estimated value of which is rupees.

3. That the said representations were false, and were then known by the said *C. D.* to be so. [*Or*, That at the time of making the said representations, the said *C. D.* was insolvent, and knew himself to be so.]

4. That the said *C. D.* afterwards transferred the said goods to the defendant *E. F.* without consideration [*or* who had notice of the falsity of the representation].

The plaintiff prays judgment :

(1) for the possession of the said goods, or for rupees, in case such possession cannot be had ;

(2) for rupees compensation for the detention thereof.

***E.*—PLAINTS IN SUITS FOR SPECIAL RELIEF.**

No. 99.

FOR RESCISSION OF A CONTRACT ON THE GROUND OF MISTAKE.

• (*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , the defendant represented to the plaintiff that a certain piece of ground belonging to the defendant, situated at , contained [ten bighás].

2. That the plaintiff was thereby induced to purchase the same at the price of rupees in the belief that the said representation was true, and signed an instrument of agreement, of which a copy is hereto annexed. But no conveyance of the same has been executed to him.

3. That on the day of 18 , the plaintiff paid the defendant rupees as part of such purchase-money.

4. That the said piece of ground contained in fact only [five bighás].

The plaintiff prays judgment :

(1) for rupees, with interest from the day of 18 ;

(2) that the said agreement of purchase be delivered up and cancelled.

No. 100.

FOR AN INJUNCTION RESTRAINING WASTE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That plaintiff is the absolute owner of [*describe the property*].

2. That the defendant is in possession of the same under a lease from the plaintiff.

3. That the defendant has [cut down a number of valuable trees, and threatens to cut down many more for the purpose of sale] without the consent of the plaintiff.

The plaintiff prays judgment, that the defendant be restrained by injunction from committing or permitting any further waste on the said premises.

[*Pecuniary compensation might also be prayed.*]

No. 101.

FOR ABATEMENT OF A NUISANCE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That plaintiff is, and at all the times hereinafter mentioned was, the absolute owner of [the house No. Street, Calcutta].

2. That the defendant is, and at all the said times was, the absolute owner of [a plot of ground in the same street].

3. That on the day of 18 , the defendant erected upon his said plot a slaughter-house, and still maintains the same; and from that day until the present time has continually caused cattle to be brought and killed there [and has caused the blood and offal to be thrown into the street opposite the said house of the plaintiff].

4. That [the plaintiff has been compelled, by reason of the premises, to abandon the said house, and has been unable to rent the same].

The plaintiff prays judgment, that the said nuisance be abated.

No. 102.

FOR AN INJUNCTION AGAINST THE DIVERSION OF A WATER-COURSE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

[As in Form No. 81.]

The plaintiff prays judgment, that the defendant be restrained by injunction from diverting the water as aforesaid.

No. 103.

FOR RESTORATION OF MOVEABLE PROPERTY THREATENED WITH
DESTRUCTION, AND FOR AN INJUNCTION.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That plaintiff is, and at all times hereinafter mentioned was, the owner of [a portrait of his grandfather, which was executed by an eminent painter], and of which no duplicate exists [*or state any facts showing that the property is of a kind that cannot be replaced by money*].

2. That on the day of 18 , he deposited the same for safe keeping with the defendant.

3. That on the day of 18 , he demanded the same from the defendant, and offered to pay all reasonable charges for the storage of the same.

4. That the defendant refuses to deliver the same to the plaintiff, and threatens to conceal, dispose of, cut, or injure the same if required to deliver it up.

5. That no pecuniary compensation would be an adequate compensation to the plaintiff for the loss of the said [painting].

The plaintiff prays judgment :

- (1) that the defendant be restrained by injunction from disposing of, injuring, or concealing the said [painting];
- (2) that he return the same to the plaintiff.

No. 104.

INTERPLEADER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That before the date of the claims hereinafter mentioned, one G. H. deposited with the plaintiff [describe the property] for [safe keeping].

2. That the defendant, C. D., claims the same [under an alleged assignment thereof to him from the said G. H.].

3. That the defendant, E. F., also claims the same [under an order of the said G. H. transferring the same to him].

4. That the plaintiff is ignorant of the respective rights of the defendants.

5. That he has no claim upon the said property, and is ready and willing to deliver it to such persons as the Court shall direct.

6. That this suit is not brought by collusion with either of the defendants.

The plaintiff prays judgment :

- (1) that the defendants be restrained, by injunction, from taking any proceedings against the plaintiff in relation thereto ;
- (2) that they be required to interplead together concerning their claims to the said property ;
- [(3) that some person be authorized to receive the said property pending such litigation ;]
- (4) that upon delivering the same to such [person], the plaintiff be discharged from all liability to either of the defendants in relation thereto.

No. 105.

ADMINISTRATION BY CREDITOR.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. E. F., late of , was at the time of his death, and his estate still is, indebted to the plaintiff in the sum of [here insert nature of debt and security, if any].

2. The said E. F. made his will, dated the day of , and thereof appointed C. D., executor [or devised his estate in trust, &c., or died intestate, as the case may be].

3. The said will was proved by the said *C. D.* [or letters of administration were granted, &c.].

4. The defendant has possessed himself of the moveable [and immoveable, or the proceeds of the immoveable] property of the said *E. F.*, and has not paid the plaintiff his said debt.

5. The said *E. F.* died on or about the day of .

6. The plaintiff prays that an account may be taken of the moveable [and immoveable] property of the said *E. F.*, deceased, and that the same may be administered under the decree of the Court.

No. 106.

ADMINISTRATION BY SPECIFIC LEGATEE.

(Title.)

[Alter Form No. 105 thus :—]

[Omit paragraph 1, and commence paragraph 2—] *E. F.*, late of , duly made his last will, dated the day of , and thereof appointed *C. D.* executor, and by such will bequeathed to the plaintiff [here state the specific legacy].

For paragraph 4, substitute—

The defendant is in possession of the moveable property of the said *E. F.*, and, amongst other things, of the said [here name the subject of the specific bequest].

For the commencement of paragraph 6 substitute—

The plaintiff prays that the defendant may be ordered to deliver to him the said [here name the subject of the specific bequest], or that, &c.

No. 107.

ADMINISTRATION BY PECUNIARY LEGATEE.

(Title.)

[Alter Form No. 105 thus :—]

[Omit paragraph 1, and substitute for paragraph 2—] *E. F.*, late of , duly made his last will, dated the day of , and thereof appointed *C. D.* executor, and by such will bequeathed to the plaintiff a legacy of rupees:

In paragraph 4, substitute "legacy" for "debt."

Another Form.

| | | | | |
|----------------------|-----|-----|-----|----------------|
| Between <i>E. F.</i> | ... | ... | ... | ... Plaintiff, |
| | | and | | |
| <i>G. H.</i> | ... | ... | ... | ... Defendant. |

E. F., the above-named plaintiff, states as follows :—

A. B., of *K.*, in the , duly made his last will, dated the [first day of March 1873], whereby he appointed the defendant and *M. N.*

4. The defendant submits that the plaintiff ought to pay the costs of this suit.

No. 108.

EXECUTION OF TRUSTS.

IN THE COURT OF AT

*Civil Suit No.**A. B., of**... Plaintiff,**against**C. D., of**, the beneficiary [or one**of the beneficiaries],**Defendant.**A. B., the above-named plaintiff, states as follows :—*

1. That he is one of the trustees under an instrument of settlement bearing date on or about the day of , made upon the marriage of *E. F.* and *G. H.*, the father and mother of the defendant [*or an instrument of assignment of the estate and effects of E. F. for the benefit of C. D., the defendant, and other the creditors of E. F.*].

2. The said *A. B.* has taken upon himself the burden of the said trust, and is in possession of [*or of the proceeds of*] the moveable and immoveable property conveyed [*or assigned*] by the before-mentioned deed.

3. The said *C. D.* claims to be entitled to a beneficial interest under the before-mentioned deed.

4. The plaintiff is desirous to account for all the rents and profits of the said immoveable property [and the proceeds of the sale of the said, *or of part of the said, immoveable property, or moveable, or the proceeds of the sale of, or of part of, the said moveable property, or the profits accruing to the plaintiff as such trustee in the execution of the said trust*]; and he prays that the Court will take the accounts of the said trust, and also that the whole of the said trust-estate may be administered in the Court for the benefit of the said *C. D.*, the defendant, and all other persons who may be interested in such administration, in the presence of the said *C. D.* and such other persons so interested as the Court may direct, or that the said *C. D.* may shew good cause to the contrary.

[*N. B.—Where the suit is by a beneficiary, the plaint may be modelled, mutatis mutandis, on the plaint by a legatee.*]

No. 109.

FORECLOSURE OR SALE.

*(Title.)**A. B., the above-named plaintiff, states as follows :—*

1. By a mortgage-deed, dated the day of 18 , a house with the garden and appurtenances, situated within the jurisdiction of this Court, were conveyed by the defendant to him, the plaintiff, his heirs [*or executors, administrators*], and assigns, for securing the principal sum of Rs. together with interest thereon at the rate of Rs. per centum per annum, subject to redemption upon payment by the said defendant of the said principal and interest at a day long since past.

2. There is now due from the defendant to the plaintiff the sum of Rs. for principal and interest on the said mortgage.

3. The plaintiff prays (a) that the Court will order the defendant to pay him the said sum of Rs. , with such further interest as may accrue between the filing of the plaint and the day of payment, and also the costs of this suit, on some day to be named by the Court, and in default that the right to redeem the said mortgaged premises may be foreclosed, and the plaintiff placed in possession of the same premises; or (b) that the said premises may be sold, and the proceeds applied in and towards the payment of the amount of the said principal, interest, and costs; and (c) that if such proceeds shall not be sufficient for the payment in full of such amount, the defendant do pay to the plaintiff the amount of the deficiency with interest thereon at the rate of six per cent. per annum until realization; and (d) that for that purpose all proper directions may be given and accounts taken by the Court.

No. 110.

REDEMPTION.

(Title.)

[Alter Form No. 109 thus :—]

Transpose parties and also the facts in paragraph 1.

For paragraph 2, substitute—

2. There is now due from the plaintiff to the defendant for principal and interest on the said mortgage, the sum of Rs. , which the plaintiff is ready and willing to pay to the defendant, of which the defendant, before filing this plaint, had notice.

For paragraph 3, substitute—

The plaintiff prays that he may redeem the said premises, and that the defendant may be ordered to re-convey the same to him upon payment of the said sum of Rs. and interest, with such costs (if any) as the Court may order, upon a day to be named by the Court, and that the Court will give all proper directions for the preparation and execution of such re-conveyance and doing such other acts as may be necessary to put him into possession of the said premises, freed from the said mortgage.

No. 111.

SPECIFIC PERFORMANCE. (No. 1.)

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. By an agreement, dated the day of , and signed by the above-named defendant, C. D., he the said C. D. contracted to buy of [or sell to] him certain immoveable property therein described and referred to, for the sum of rupees.

2. He has applied to the said C. D. specifically to perform the said agreement on his part, but he has not done so.

3. The said *A. B.* has been and still is ready and willing specifically to perform the agreement on his part, of which the said *C. D.* has had notice.

4. The plaintiff prays that the Court will order the said *C. D.* specifically to perform the said agreement and to do all acts necessary to put the said *A. B.* in full possession of the said property [or to accept a conveyance and possession of the said property], and to pay the costs of the suit.

[*N.B.*—In suit for delivery up, to be cancelled, of any agreement, omit paragraphs 2 and 3, and substitute a paragraph stating generally the grounds for requiring the agreement to be delivered up to be cancelled—such as, that the plaintiff signed it by mistake, under duress, or by the fraud of the defendant—and alter the prayer according to the relief sought.]

No. 112.

SPECIFIC PERFORMANCE. (No. 2.)

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , the defendant was absolutely entitled to certain immoveable property described in the agreement hereto annexed.

2. That on the same day, the plaintiff and defendant entered into an agreement, under their hands, a copy of which is hereto annexed.

3. That on the day of 18 , the plaintiff tendered rupees to the defendant, and demanded a conveyance of the said property.

4. That on the day of 18 , the plaintiff again demanded such conveyance. [Or that the defendant refused to convey the same to the plaintiff.]

5. That the defendant has not executed such conveyance.

6. That the plaintiff is still ready and willing to pay the purchase-money of the said property to the defendant.

The plaintiff prays judgment :

(1) that the defendant execute to the plaintiff a sufficient conveyance of the said property [following the terms of the agreement] ;

(2) for rupees compensation for withholding the same.

No. 113.

PARTNERSHIP.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. He and the said *C. D.*, the defendant, have been, for the space of years [or months] last past, carrying on business together at , within the jurisdiction of this Court, under certain articles of partnership in writing, signed by them respectively [or under a certain deed sealed and executed by them respectively, or under a verbal agreement between them, the said plaintiff and defendant].

2. Divers disputes and differences have arisen between the plaintiff and defendant as such partners, whereby it has become impossible to carry on the said business in partnership with advantage to the partners.

3. The plaintiff desires to have the said partnership dissolved, and he is ready and willing to bear his share of the debts and obligations of the partnership according to the terms of the said articles [or deed, or agreement].

4. The plaintiff prays the Court to decree a dissolution of the said partnership, and that the accounts of the said partnership-trading may be taken by the Court, and the assets thereof realized, and that each party may be ordered to pay into Court any balance due from him upon such partnership-account, and that the debts and liabilities of the said partnership may be paid and discharged, and that the costs of the suit may be paid, out of the partnership-assets, and that any balance remaining of such assets, after such payment and discharge, and the payment of the said costs, may be divided between the plaintiff and defendant, according to the terms of the said articles [or deed, or agreement], or that, if the said assets shall prove insufficient, he the plaintiff and the said defendant may be ordered to contribute in such proportions as shall be just to a fund to be raised for the payment and discharge of such debts, liabilities, and costs. And to give such other relief as the Court shall think fit.

This shall be filed by _____ of _____, pleader _____ for the plaintiff, _____, [or by _____].

[N. B.—In suits for winding-up of any partnership, omit the prayer for dissolution; but instead thereof insert a paragraph stating the fact of the partnership having been dissolved.]

No. 114.

FORMS OF CONCISE STATEMENTS.

[Code of Civil Procedure, section 58.]

| | |
|------------------------|---|
| Money lent. | The plaintiff's claim is _____ rs. for money lent [and interest]. |
| Several demands. | The plaintiff's claim is _____ rs., whereof _____ rs. is for the price of goods sold, and _____ rs. for money lent, and _____ rs. for interest. |
| Rent. | The plaintiff's claim is _____ rs. for arrears of rent. |
| Salary, &c. | The plaintiff's claim is _____ rs. for arrears of salary as a clerk [or as the case may be]. |
| Interest. | The plaintiff's claim is _____ rs. for interest upon money lent. |
| General average. | The plaintiff's claim is _____ rs. for a general average contribution. |
| Freight, &c. | The plaintiff's claim is _____ rs. for freight and demurrage. |
| Banker's balance. | The plaintiff's claim is _____ rs. for money deposited with the defendant as a banker. |
| Fees, &c., as pleader. | The plaintiff's claim is _____ rs. for fees for work done [and _____ rs., money expended] as a pleader. |

FORMS OF CONCISE STATEMENTS—*continued*.

| | | |
|--|--|--|
| Commission. | The plaintiff's claim is earned as [<i>state character—as</i> auctioneer, cotton-broker, &c.]. | rs. for commission |
| Medical attendance, &c. | The plaintiff's claim is | rs. for medical attendances. |
| Return of premium. | The plaintiff's claim is | rs. for a return of premiums paid upon policies of insurance. |
| Warehouse rent. | The plaintiff's claim is | rs. for the warehousing of goods. |
| Carriage of goods. | The plaintiff's claim is | rs. for the carriage of goods by railway. |
| Use and occupation of house. | The plaintiff's claim is | rs. for the use and occupation of a house. |
| Hire of goods. | The plaintiff's claim is | rs. for the hire of [furniture]. |
| Work done. | The plaintiff's claim is | rs. for work done as a [surveyor]. |
| Board and lodging. | The plaintiff's claim is | rs. for board and lodging. |
| Schooling. | The plaintiff's claim is | rs. for the [board, lodging, and] tuition of X. Y. |
| Money received. | The plaintiff's claim is | rs. for money received by the defendant as pleader [<i>or factor, or collector, or, &c.</i>] of the plaintiff. |
| Fees of office. | The plaintiff's claim is | rs. for fees received by the defendant under colour of the office of . |
| Money over-paid. | The plaintiff's claim is | rs. for a return of money overcharged for the carriage of goods by railway. |
| | The plaintiff's claim is | rs. for a return of fees overcharged by the defendant as . |
| Return of money by stake-holder. | The plaintiff's claim is | rs. for a return of money deposited with the defendant as stake-holder. |
| Money won from stake-holder. | The plaintiff's claim is | rs. for money entrusted to the defendant as stake-holder, and become payable to plaintiff. |
| Money entrusted to agent. | The plaintiff's claim is | rs. for a return of money entrusted to the defendant as agent of the plaintiff. |
| Money obtained by fraud. | The plaintiff's claim is | rs. for a return of money obtained from the plaintiff by fraud. |
| Money paid by mistake. | The plaintiff's claim is | rs. for a return of money paid to the defendant by mistake. |
| Money paid for consideration which has failed. | The plaintiff's claim is | rs. for a return of money paid to the defendant for [work to be done, <i>or</i> work left undone ; <i>or</i> a bill to be taken up, <i>or</i> a bill not taken up, <i>or, &c.</i>]. |
| | The plaintiff's claim is | rs. for a return of money paid as a deposit upon shares to be allotted. |

FORMS OF CONCISE STATEMENTS—*continued.*

| | | |
|-------------------------------------|---|----------------------------|
| Money paid by surety for defendant. | The plaintiff's claim is the defendant as his surety. | rs. for money paid for |
| Rent paid. | The plaintiff's claim is rent due by the defendant. | rs. for money paid for |
| Money paid on accommodation-bill. | The plaintiff's claim is exchange accepted [<i>or indorsed</i>] for the defendant's accommodation. | rs. upon a bill of ex- |
| Contribution by surety. | The plaintiff's claim is respect of money paid by the plaintiff as surety. | rs. for a contribution in |
| By co-debtor. | The plaintiff's claim is respect of a joint debt of the plaintiff and the defendant, paid by the plaintiff. | rs. for a contribution in |
| Money paid for calls. | The plaintiff's claim is calls upon shares, against which the defendant was bound to indemnify the plaintiff. | rs. for money paid for |
| Money payable under award. | The plaintiff's claim is under an award. | rs. for money payable |
| Life-policy. | The plaintiff's claim is insurance upon the life of <i>X. Y.</i> , deceased. | rs. upon a policy of in- |
| Money bond. | The plaintiff's claim is payment of rs. and interest. | rs. upon a bond to secure |
| Foreign judgment. | The plaintiff's claims is the Court in [the Empire of Russia]. | rs. upon a judgment of |
| Bills of exchange, &c. | The plaintiff's claim is by the defendant. | rs. upon a cheque drawn |
| | The plaintiff's claim is exchange accepted [<i>or drawn, or indorsed</i>] by the defendant. | rs. upon a bill of ex- |
| | The plaintiff's claim is note made [<i>or indorsed</i>] by the defendant. | rs. upon a promissory |
| | The plaintiff's claim is against the defendant, <i>A. B.</i> , as acceptor, and against the defendant, <i>C. D.</i> , as drawer, [<i>or indorser</i>] of a bill of exchange. | rs. against the defend- |
| Surety. | The plaintiff's claim is against the defendant as surety for the price of goods sold. | rs. against the defend- |
| | The plaintiff's claim is against the defendant, <i>A. B.</i> , as principal, and against the defendant, <i>C. D.</i> , as surety, for the price of goods sold [<i>or for arrears of rent, or for money lent, or for money received by the defendant, A. B., as traveller for the plaintiff, or, &c.</i>]. | rs. against the defend- |
| Calls. | The plaintiff's claim is | rs. for calls upon shares. |

Indorsement for Costs, &c.

[*Add to the above forms*] and rs. for costs; and if the amount claimed be paid to the plaintiff or his pleader within days [*or, if the summons is to be served out of the jurisdiction, insert the time for appearance limited by the order*] from the service hereof, further proceedings will be stayed.

FORMS OF CONCISE STATEMENTS—*continued**Damages and other Claims.***Agent, &c.**

The plaintiff's claim is for damages for breach of a contract to employ the plaintiff as traveller.

The plaintiff's claim is for damages for wrongful dismissal from the defendants's employment as traveller [and rs. for arrears of wages].

The plaintiff's claim is for damages for the defendant's wrongfully quitting the plaintiff's employment as manager.

The plaintiff's claim is for damages for breach of duty as factor [*or, &c.*] of the plaintiff [and rs. for money received as factor, *or, &c.*].

Apprentices.

The plaintiff's claim is for damages for breach of the terms of a deed of apprenticeship of *X. Y.* to the defendant [*or* plaintiff].

Arbitration.

The plaintiff's claim is for damages for non-compliance with the award of *X. Y.*

Assault, &c.

The plaintiff's claim is for damages for assault [and false imprisonment, and for malicious prosecution].

By husband and wife.

The plaintiff's claim is for damages for assault and false imprisonment of the plaintiff, *C. D.*

Against husband and wife.

The plaintiff's claim is for damages for assault by the defendant, *C. D.*

Pleader.

The plaintiff's claim is for damages for injury by the defendant's negligence as pleader of the plaintiff.

Bailment.

The plaintiff's claim is for damages for negligence in the custody of goods [and for wrongfully detaining the same].

Pledge.

The plaintiff's claim is for damages for negligence in the keeping of goods pawned [and for wrongfully detaining the same].

Hire.

The plaintiff's claim is for damages for negligence in the custody of furniture [*or* a carriage] lent on hire [and for wrongfully, &c.].

Banker.

The plaintiff's claim is for damages for wrongfully neglecting [*or* refusing] to pay the plaintiff's cheque.

Bill.

The plaintiff's claim is for damages for breach of a contract to accept the plaintiff's drafts.

Bond.

The plaintiff's claim is upon a bond conditioned not to carry on the trade of a .

Carrier.

The plaintiff's claim is for damages for refusing to carry the plaintiff's goods by railway.

The plaintiff's claim is for damages for refusing to carry the plaintiff by railway.

The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of coals by railway.

FORMS OF CONCISE STATEMENTS—*continued.*

| | |
|---------------------------------------|---|
| Carrier. | The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of machinery by sea. |
| Charter-party. | The plaintiff's claim is for damages for breach of charter-party of ship [<i>Mary</i>]. |
| Claim for return of goods; damages. | The plaintiff's claim is for return of household furniture [<i>or, &c.</i>], or their value, and for damages for detaining the same. |
| Damages for depriving of goods. | The plaintiff's claim is for wrongfully depriving plaintiff of goods, household furniture, &c. |
| Defamation. | The plaintiff's claim is for damages for libel. The plaintiff's claim is for damages for slander. |
| Wrongful distress. | The plaintiff's claim is for damages for improperly distraining. [<i>This Form shall be sufficient, whether the distress complained of be wrongful, or excessive, or irregular.</i>] |
| Ejectment. | The plaintiff's claim is to recover possession of a house, No. , in Street, or of a farm, called Blackacre, situate in the of in the of . |
| To establish title and recover rents. | The plaintiff's claim is to establish his title to [<i>here describe property</i>], and to recover the rents thereof. [<i>The two previous Forms may be combined.</i>] |
| Fishery. | The plaintiff's claim is for damages, for infringement of the plaintiff's right of fishing. |
| Fraud. | The plaintiff's claim is for damages for fraudulent misrepresentation on the sale of a horse [<i>or a business, or shares, or, &c.</i>]. The plaintiff's claim is for damages for fraudulent misrepresentation of the credit of <i>A. B.</i> |
| Guarantee. | The plaintiff's claim is for damages for breach of a contract of guarantee for <i>A. B.</i> The plaintiff's claim is for damages for breach of a contract to indemnify the plaintiff as the defendant's agent to distrain. |
| Insurance. | The plaintiff's claim is for a loss under a policy upon the ship [<i>Royal Charter</i>], and freight of cargo [<i>or for return of premiums</i>]. [<i>This Form shall be sufficient, whether the loss claimed be total or partial.</i>] |
| Fire-insurance. | The plaintiff's claim is for a loss under a policy of fire-insurance upon house and furniture. The plaintiff's claim is for damages for breach of a contract to insure a house. |
| Landlord and tenant. | The plaintiff's claim is for damages for breach of a contract to keep a house in repair. |

FORMS OF CONCISE STATEMENTS—*continued.*

| | |
|----------------------|---|
| Landlord and tenant. | The plaintiff's claim is for damages for breaches of covenants contained in a lease of a farm. |
| Medical man. | The plaintiff's claim is for damages for injury to the plaintiff from the defendant's negligence as a medical man. |
| Mischievous animal. | The plaintiff's claim is for damages for injury by the defendant's dog. |
| Negligence. | The plaintiff's claim is for damages for injury to the plaintiff by the negligent driving of the defendant or his servants. |
| | The plaintiff's claim is for damages for injury to the plaintiff while a passenger on the defendant's railway by the negligence of the defendant's servants. |
| | The plaintiff's claim is for damages for injury to the plaintiff at the defendant's railway-station from the defective condition of the station. |
| Act XIII. of 1855. | The plaintiff's claim is as executor of <i>A. B.</i> , deceased, for damages for the death of the said <i>A. B.</i> , from injuries received while a passenger on the defendant's railway, by the negligence of the defendant's servants. |
| Promise of marriage. | The plaintiff's claim is for damages for breach of promise of marriage. |
| Sale of goods. | The plaintiff's claim is for damages for breach of contract to accept and pay for goods. |
| | The plaintiff's claim is for damages for non-delivery [or short delivery, or defective quality, or other breach of contract of sale] of cotton [or, &c.]. |
| | The plaintiff's claim is for damages for breach of warranty of a horse. |
| Sale of land. | The plaintiff's claim is for damages for breach of a contract to sell [or purchase] land. |
| | The plaintiff's claim is for damages for breach of a contract to let [or take] a house. |
| | The plaintiff's claim is for damages for breach of a contract to sell [or purchase] the lease, with good-will, fixtures, and stock-in-trade of a public-house. |
| | The plaintiff's claim is for damages for breach of covenant for title [or for quiet enjoyment, or, &c.] in a conveyance of land. |
| Trespass on land. | The plaintiff's claim is for damages for wrongfully entering the plaintiff's land and drawing water from his well [or cutting his grass, or felling his timber, or pulling down his fences, or removing his gate, or using his road or path, or crossing his field, or depositing sand there, or carrying away gravel from thence, or carrying away stones from his river]. |
| Support. | The plaintiff's claim is for damages for wrongfully taking away the support of plaintiff's land [or house, or mine]. |

FORMS OF CONCISE STATEMENTS—*continued.*

- Way.** The plaintiff's claim is for damages for wrongfully obstructing a way [public highway, or private way].
- Water-course, &c.** The plaintiff's claim is for damages for wrongfully diverting [or obstructing, or polluting, or diverting, water from] a water-course.
- The plaintiff's claim is for damages for wrongfully discharging water upon the plaintiff's land [or into the plaintiff's mine].
- The plaintiff's claim is for damages for wrongfully obstructing the plaintiff's use of a well.
- Pasture.** The plaintiff's claim is for damages for the infringement of the plaintiff's right of pasture.
- [*This form shall be sufficient, whatever the nature of the right to pasture be.*]
- Light.** The plaintiff's claim is for damages for obstructing the access of light to plaintiff's house.
- Patent.** The plaintiff's claim is for damages for the infringement of the plaintiff's patent.
- Copy-right.** The plaintiff's claim is for damages for the infringement of the plaintiff's copy-right.
- Trade-mark.** The plaintiff's claim is for damages for wrongfully using [or imitating] the plaintiff's trade-mark.
- Work.** The plaintiff's claim is for damages for breach of a contract to build a ship [or to repair a house, &c.].
- The plaintiff's claim is for damages for breach of a contract to employ the plaintiff to build a ship, &c.
- Nuisance.** The plaintiff's claim is for damages to his house, trees, crops, &c., caused by noxious vapours from the defendant's factory [or, &c.].
- The plaintiff's claim is for damages from nuisance by noise from the defendant's works [or stables, or, &c.].
- Injunction.** [Add to indorsement] :—and for an injunction.
- [Add to indorsement where claim is to land, or to establish title, or both] :—
- Mesne-profits.** and for mesne-profits.
- Arrears of rent.** and for an account of rent or arrears of rent.
- Breach of covenant.** and for breach of covenant for [repairs].

1. *Creditor to administer Estate.*

The plaintiff's claim is as a creditor of X. Y., of , deceased, to have the moveable and immoveable property of the said X. Y. administered. The defendant, C. D., is sued as the administrator of the said X. Y. [and the defendants, E. F. and G. H., as his co-heirs at-law].

FORMS OF CONCISE STATEMENTS—*continued.*2. *Legatee to administer Estate.*

The plaintiff's claim is, as a legatee under the will dated the day of 18 , of X. Y., deceased, to have the moveable and immoveable property of the said X. Y. administered. The defendant, C. D., is sued as the executor of the said X. Y. [and the defendants E. F. and G. H., as his devisees].

3. *Partnership.*

The plaintiff's claim is to have an account taken of the partnership-dealings between the plaintiff and defendant [under articles of partnership dated the day of], and to have the affairs of the partnership wound up.

4. *By Mortgagee.*

The plaintiff's claim is to have an account taken of what is due to him for principal, interest, and costs on a mortgage dated the day of , made between [parties] [or by deposit of title-deeds], and that the mortgage may be enforced by foreclosure or sale.

5. *By Mortgagor.*

The plaintiff's claim is to have an account taken of what, if anything, is due on a mortgage, dated , and made between [parties], and to redeem the property comprised therein.

6. *Raising Portions.*

The plaintiff's claim is that the sum of rs., which by a deed of settlement, dated , was provided for the portions of the younger children of , may be raised.

7. *Execution of Trusts.*

The plaintiff's claim is to have the trusts of an indenture, dated , and made between [parties], carried into execution.

8. *Cancellation or Rectification.*

The plaintiff's claim is to have a deed, dated and made between [parties], set aside or rectified.

9. *Specific Performance.*

The plaintiff's claim is for specific performance of an agreement, dated the day of for the sale by the plaintiff to the defendant of certain [freehold] hereditaments at .

FORMS OF CONCISE STATEMENTS—*continued.*

No. 115.

PROBATE.

1. *By an executor or legatee propounding a will in solemn form.*

The plaintiff claims to be executor of the last will, dated the day of , of C. D., late of , deceased, who died on the day of , and to have the said will established. This summons is issued against you as one of the next-of-kin of the said deceased [or as the case may be].

2. *By an executor or legatee of a former will, or a next-of-kin, &c., of the deceased, seeking to obtain the revocation of a probate granted in common form.*

The plaintiff claims to be executor of the last will, dated the day of , of C. D., late of , deceased, who died on the day of , and to have the probate of a pretended will of the said deceased, dated the day of , revoked. This summons is issued against you as the executor of the said pretended will [or as the case may be].

3. *By an executor or legatee of a will when letters of administration have been granted as in an intestacy.*

The plaintiff claims to be executor of the last will of C. D., late of , deceased, who died on the day of , dated the day of .

The plaintiff claims that the grant of letters of administration of the estate of the said deceased obtained by you should be revoked, and probate of the said will granted to him.

4. *By a person claiming a grant of administration as a next-of-kin of the deceased, but whose interest as next-of-kin is disputed.*

The plaintiff claims to be the brother and sole next-of-kin of C. D., of , deceased, who died on the day of , intestate, and to have as such a grant of administration to the personal estate of the said intestate. This writ is issued against you because you have entered a caveat, and have alleged that you are the sole next-of-kin of the deceased [or as the case may be].

No. 117.

SUMMONS FOR DISPOSAL OF SUIT.

Sections 64 and 68 of the Code of Civil Procedure.

(Title.)

To

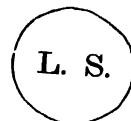
dwelling at

WHEREAS

- NOTICE.—1. Should you apprehend your witnesses will not attend of their own accord, you can have summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call upon the witness to produce, on applying to the Court at any time before the trial, on your depositing their necessary subsistence-money.
2. If you admit the demand, you should pay the money into Court, with the costs of the suit, to avoid the summary execution of the decree, which may be against your person or property, or both, if necessary.

has instituted a suit against you for
 , you are hereby summoned to appear in this Court in person or by a duly authorized pleader of the Court, duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some other person able to answer all such questions on the day of 18 , at o'clock in the forenoon, to answer the above-named plaintiff; and as the day fixed for your appearance is appointed for the final disposal of the suit, you must be prepared to produce all your witnesses on that day; and you are hereby required to take notice that, in default of your appearance on the day before-mentioned, the suit will be heard and determined in your absence; and you will bring with you, or send by your pleader , which the plaintiff desires to inspect, and any documents on which you intend to rely in support of your defence.

GIVEN under my hand and the seal of
 the Court this day of 18 .



Judge.

NOTE.—If written statements are required, say—You are [or such a party is, as the case may be] required to put in a written statement by the day of .

No. 118.

SUMMONS FOR SETTLEMENT OF ISSUES.

Sections 64 and 68 of the Code of Civil Procedure.

(Title.)

To

dwelling at

WHEREAS

NOTICE.—1. Should you apprehend your witnesses will not attend of their own accord, you can have summonses from this Court to compel the attendance of any witness, and the production of any document that you have a right to call on the witness to produce, on applying to the Court at any time before the trial, on your depositing their necessary subsistence-money.

2. If you admit the demand, you should pay the money into Court, with the costs of the suit, to avoid the summary execution of the decree, which may be against your person or property, or both, if necessary.

has instituted a suit against you for

, you are hereby summoned to appear in this Court in person or by a duly authorized pleader of the Court, duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some other person able to answer all such questions, on the day of 18, at o'clock in the forenoon, to answer the above-named plaintiff; and you are hereby required to take notice that, in default of your appearance on the day before-mentioned, the issues will be settled in your absence; and you will bring with you, or send by your pleader, which the plaintiff desires to inspect, and any document on which you intend to rely in support of your defence.

GIVEN under my hand and the seal of the Court this day of 18.

L. S.

Judge.

NOTE.—If written statements are required, say—You are [or such a party is, as the case may be] required to put in a written statement by the day of .

No. 119.*

SUMMONS TO APPEAR.

Section 68 of the Code of Civil Procedure.

No. of SUIT.

IN THE COURT OF

AT

Plaintiff.
Defendant.

[Name, description, and address.]

To

WHEREAS [here enter the name, description, and address of the plaintiff] has instituted a suit in this Court against you [here state the particulars of the claim as in the register]: you are hereby summoned to appear in this Court in person on the day of at in the forenoon [if not specially required to appear in person, state—“in person or by a pleader of the Court duly instructed and able to answer all material questions relating to the suit, or who shall be accompanied by some other person able to answer all such questions”] to answer the above-named plaintiff. [If the summons be for the final disposal of the suit, this further direction shall be added here—“and as the day fixed for your appearance is appointed for the final disposal of the suit, you must be prepared to produce all your witnesses on that day”]; and you are hereby required to take notice that, in default of your appearance on the day before-mentioned, the suit will be heard and determined in your absence; and you will bring with you (or send by your agent) [here mention any document the production of which may be required by the plaintiff], which the plaintiff desires to inspect, and any document on which you intend to rely in support of your defence.

GIVEN under my hand and the seal of the Court this day
of 18 .

Judge.

No. 120.

ORDER FOR TRANSMISSION OF SUMMONS FOR SERVICE IN THE
JURISDICTION OF ANOTHER COURT.

Section 85 of the Code of Civil Procedure.

IN THE COURT OF

AT

Civil Suit, No. of 18 .

A. B., of

against

C. D., of

The day of 18 .

WHEREAS it is stated in the plaint that , the defendant in
the above suit , is at present residing in , but that the

right to sue accrued within the jurisdiction of this Court: it is ordered that a summons, returnable on the day of 18 , be forwarded for service on the said defendant, to the Court of , with a duplicate of this proceeding.

L. S.

Judge.

No. 121.

TO ACCOMPANY RETURN OF SUMMONS OF ANOTHER COURT.

Section 85 of the Code of Civil Procedure.

IN THE COURT OF

AT
Civil Suit, No. of 18 .
The day of 18 .
A. B., of
against
C. D., of

Read proceeding from the , forwarding for service
on in Civil No. of that Court.
Read bailiff's endorsement on the back of the process stating that
the and proof of the above having been duly taken by me on
the [oath or] affirmation of and , it is ordered that the
be returned to the with a copy of this proceeding.

L. S.

Judge.

NOTE.—This form will be applicable to process other than summons, the service of which may have to be effected in the same manner.

No. 122.

DEFENDANT'S STATEMENT.

Section 110 of the Code of Civil Procedure.

(Title.)

I, the undersigned defendant [or one of the defendants], disclaim all interest under the will of the said E. F., in the plaint, named [or as heir-at-law, or as next-of-kin, or one of the next-of-kin, of E. F., deceased, in the said plaint named].

Or, I, the undersigned defendant, state that I admit [or deny] here repeat in the language of the plaint the statements admitted or denied].

Or, I, the undersigned defendant, submit that, upon the facts stated in the plaint, it does not appear that there is any agreement which can be legally enforced [or that it appears upon the said plaint that I am jointly liable with one *E. F.*, who is not a party to the suit, and not severally liable as by the plaint appears, or that it appears by the said plaint that *G. H.* should have been a joint plaintiff with the said *A. B.* in the said suit, or as the case may be].

Or, that the plaintiff has conveyed his interest in the said mortgage [or right to redeem] to one *I. J.* [or that I have conveyed or assigned to *H. L.*, by way of further charge for securing the sum of Rs. , the right to redeem in the property sought by the suit to be foreclosed].

Or, that since the dissolution of the partnership the plaintiff has executed an instrument, whereby the plaintiff covenants to discharge all debts and liabilities of the partnership, and generally to release me from all claims and liabilities either by or to himself and others in respect of the said partnership-trading [or as the case may be].

(Signed) C. D.,
Defendant.

No. 123.

INTERROGATORIES.

Section 121 of the Code of Civil Procedure.

IN THE COURT OF AT
Civil Suit, No. of 18
A. B.
against
C. D., E. F., and G. H.

Interrogatories on behalf of the above-named *A. B.* [or *C. D.*] for the examination of the above-named [*E. F.* and *G. H.*, or *A. B.*].

1. Did not, &c.
2. Has not, &c.

The defendant *E. F.* is required to answer the interrogatories numbered

The defendant *G. H.* is required to answer the interrogatories numbered

No. 124.

FORM OF NOTICE TO PRODUCE DOCUMENTS.

Section 131 of the Code of Civil Procedure.

IN THE COURT OF AT
Civil Suit, No. of 18
A. B.
against
C. D.

Take notice that the plaintiff [or defendant] requires you to produce for his inspection the following documents referred to in your plaint [or

written statement, or affidavit], dated the day of 18 .

Describe documents required.

X. Y., Pleader for the plaintiff [or the defendant].

To Z.,

Pleader for the defendant [or plaintiff].

No. 125.

SUMMONS TO ATTEND AND GIVE EVIDENCE.

Sections 159 and 163 of the Code of Civil Procedure.

(Title.)

To

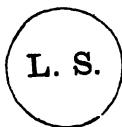
WHEREAS your attendance is required to on behalf of the in the above cause, you are hereby required [personally to appear before this Court] on the day of 18 , at the hour of A.M. [and] to bring with you or to send to this Court .

A sum of Rs. , being your travelling and other expenses and subsistence-allowance for one day, is herewith sent. If you do not comply with this order, you will be subject to the consequence of non-attendance laid down in the Code of Civil Procedure, section 170.

Notice—(1.) If you are summoned only to produce a document, and not to give evidence, you shall be deemed to have complied with the summons if you cause such document to be produced in this Court on the day and hour aforesaid.

(2.) If you are to be detained beyond the day aforesaid, a sum of Rs. will be tendered to you for each day's attendance beyond the day specified.

GIVEN under my hand and the seal of the Court, this day of 18 .



Judge.

No. 126.

Another Form.

No. of SUIT.

IN THE COURT OF

AT

Plaintiff.

Defendant.

To

[Name, description, and address.]

You are hereby summoned to appear in this Court in person on the day of at in the forenoon, to give evidence on behalf of the plaintiff [or the defendant] in the above-mentioned suit,

and to produce [*here describe with convenient certainty any document the production of which may be required. If the summons be only to give evidence, or if it be only to produce a document, it must be expressed accordingly*], and you are not to depart thence until you have been examined [*or have produced the document*] and the Court has risen, or unless you have obtained the leave of the Court.

FORMS OF DECREES.

No. 127.

SIMPLE MONEY-DECREE.

(Title.)

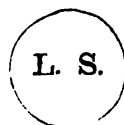
Claim for

THIS cause coming on for final disposal before in the presence of on the part of the plaintiff, and on the part of the defendant, it is ordered that the do pay to the the sum of Rs. , with interest thereon at the rate of per cent. per from to the date of realization of the said sum, and do also pay to the the costs of this suit as taxed by the officer of the Court, with interest thereon at the rate aforesaid from the date of taxation to the date of realization.

Costs of Suit.

| PLAINTIFF. | | | DEFENDANT. | | |
|--|-----|-------|----------------------------------|-----|-------|
| | Rs. | A. P. | | Rs. | A. P. |
| 1. Stamp for plaint | | | Stamp for power | | |
| 2. Do. for power | | | Do. petition | | |
| 3. Do. exhibits | | | Pleader's fee | | |
| 4. Pleader's fees on Rs. | | | Subsistence for witnesses | | |
| 5. Translation-fee | | | Service of process | | |
| 6. Subsistence for witness for attendance | | | Translation-fee | | |
| 7. Commissioner's fee | | | Commissioner's fee | | |
| 8. Service of process | | | | | |
| 9. &c. | | | | | |
| TOTAL | | | TOTAL | | |

GIVEN under my hand and the seal of the Court, this day of
18 .



Judge.

No. 128.

DECREE FOR SALE IN A SUIT BY A MORTGAGEE OR PERSON
ENTITLED TO A LIEN.

(Title.)

It is ordered that it be referred to the Registrar [or Taxing Officer] to take an account of what is due to the plaintiff for principal and interest on the mortgage [or lien] mentioned in the plaint, and to tax the plaintiff's costs of this suit, and that the Registrar [or Taxing Officer] do declare in Court on the day of what he shall find to be due for principal and interest as aforesaid, and for costs; And upon the defendant paying into Court what shall be certified to be due to the plaintiff for principal and interest as aforesaid, together with the said costs, within six months from the date of declaring in Court the amount so due; it is ordered that the plaintiff do re-convey the said mortgaged premises free and clear from all incumbrances done by him, or any claiming by, from, or under, him, and do deliver up to the defendant or to such person as he appoints all documents in his custody or power relating thereto, and that upon such re-conveyance being made, and documents being delivered up, the Registrar [or Taxing Officer] shall pay out to the plaintiff the said sum so paid in as aforesaid for principal, interest, and costs; but in default of the defendant paying into Court such principal, interest, and costs as aforesaid by the time aforesaid, then it is ordered that the said mortgaged premises [or the premises subject to the said lien] be sold with the approbation of the Registrar [or Taxing Officer]. And it is ordered that the proceeds of such sale (after defraying thereout the expenses of the sale) be paid into Court, to the end that the same may be duly applied in payment of what shall be found due to the plaintiff for principal, interest, and costs as aforesaid, and that the balance (if any) shall be paid to the defendant or other person entitled to receive the same.

No 129

~~FIRST~~ DECREE FOR FORECLOSURE.

(Title.)

WHEREAS it appears to the Court that the defendant has not paid into Court the sum , which was, on the day of last, declared in Court to be due to the plaintiff for principal and interest upon the mortgage in the plaint mentioned, and for costs, pursuant to the order made in this suit on the day of last, and that the period of six months has elapsed since the said day of ;

It is ordered that the defendant do stand absolutely debarred of all right to redeem the said mortgaged premises.

No. 130.

PRELIMINARY ORDER—ADMINISTRATION SUIT.

Section 213 of the Code of Civil Procedure.

(Title.)

It is ordered that the following accounts and inquiries be taken and made, that is to say:—

In creditor's suit—

1. That an account be taken of what is due to the plaintiff and all other the creditors of the deceased.

In suits by legatees—

2. An account be taken of the legacies given by the testator's will.

In suits by next-of-kin—

An inquiry be made and account taken of what, or of what share, if any, the plaintiff is entitled to as next-of-kin [or one of the next-of-kin] of the intestate.

[After the first paragraph, the Order will, where necessary, order, in a creditor's suit, inquiry and accounts for legatees, heirs-at-law, and next-of-kin. In suits by claimants other than creditors, after the first paragraph, in all cases, an order to inquire and take an account of creditors will follow the first paragraph, and such of the others as may be necessary will follow, omitting the first formal words. The form is continued as in a creditor's suit.]

3. An account of the funeral and testamentary expenses.

4. An account of the moveable property of the deceased come to the hands of the defendant, or to the hands of any other person by his order or for his use.

5. An inquiry what part (if any) of the moveable property of the deceased is outstanding and undisposed of.

6. And it is further ordered that the defendant do, on or before the day of next, pay into Court all sums of money which shall be found to have come to his hands, or to the hands of any person by his order or to his use.

7. And that if the Registrar shall find it necessary for carrying out the objects of the suit to sell any part of the moveable property of the deceased, that the same be sold accordingly, and the proceeds paid into Court.

8. And that Mr. E. F. be Receiver in the suit [or proceeding], and receive and get in all outstanding debts and outstanding moveable property of the deceased [and pay the same into the hands of the Registrar], and shall give security by bond for the due performance of his duties to the amount of rupees].

9. And it is further ordered that, if the moveable property of the deceased be found insufficient for carrying out the objects of the suit, then the following further inquiries be made, and accounts taken, that is to say,—

(a) an enquiry what immoveable property the deceased was seized of or entitled to at the time of his death;

(b) an inquiry what are the incumbrances (if any) affecting the immoveable property of the deceased, or any part thereof;

(c) an account, so far as possible, of what is due to the several incumbrancers, and to include a statement of the priorities of such of the incumbrancers as shall consent to the sale hereinafter directed.

10. And that the immoveable property of the deceased, or so much thereof as shall be necessary to make up the fund in Court sufficient to carry out the object of the suit, be sold with the approbation of the Judge, free from incumbrances (if any) of such incumbrancers as shall consent to the sale, and subject to the incumbrances of such of them as shall not consent.

11. And it is ordered that *G. H.* shall have the conduct of the sale of the immoveable property, and shall prepare the conditions and contracts of sale subject to the approval of the Registrar, and that in case any doubt or difficulty shall arise the papers shall be submitted to the Judge to settle.

12. And it is further ordered that, for the purpose of the inquiries hereinbefore directed, the Registrar shall advertise in the newspapers according to the practice of the Court, or shall make such inquiries in any other way which shall appear to the Registrar to give the most useful publicity to such inquiries.

13. And it is ordered that the above inquiries and accounts be made and taken, and that all other acts ordered to be done be completed, before the day of , and that the Registrar do certify the result of the inquiries and the accounts, and that all other acts ordered are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of .

14. And, lastly, it is ordered that this suit [or matter] stand adjourned for making final decree to the day of .

[Such part only of this order is to be used as is applicable to the particular case.]

No. 131.

FINAL DECREE IN AN ADMINISTRATION SUIT BY A LEGATEE.

Section 213 of the Code of Civil Procedure.

1. It is ordered that the defendant do, on or before the day of , pay into Court the sum of Rs. , the balance by the said certificate found to be due from the said defendant on account of the estate of , the testator, and also the sum of Rs. , for interest, at the rate of Rs. per centum per annum, from the day of to the day of , amounting together to the sum of Rs. .

2. Let the Registrar [or Taxing Officer] of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said costs, when so taxed, be paid out of the said sum of Rs. ordered to be paid into Court as aforesaid, as follows:—

(a.) The costs of the plaintiff to Mr. , his attorney [or pleader], and the costs of the defendant to Mr. , his attorney [or pleader].

(b.) And (if any debts are due), with the residue of the said sum of Rs. , after payment of the plaintiff's and defendant's costs as aforesaid, let the sums found to be owing to the several creditors mentioned in the schedule to the Registrar's certificate, together with subsequent interest on such of the debts as bear interest, be paid; and, after making such payments, let the amount coming to the several legatees mentioned in the schedule, together with subsequent interest (to be verified as aforesaid), be paid to them.

3. And if there should then be any residue, let the same be paid to the residuary legatee.

**DECREE IN AN ADMINISTRATION SUIT BY A LEGATEE, WHERE
AN EXECUTOR IS HELD PERSONALLY LIABLE
FOR THE PAYMENT OF LEGACIES.**

Section 213 of the Code of Civil Procedure.

1. Declare that the defendant is personally liable to pay the legacy of Rs. , bequeathed to the plaintiff;

2. And it is ordered that an account be taken of what is due for principal and interest on the said legacy;

3. And it is also ordered that the defendant do, within weeks after the date of the Registrar's certificate, pay to the plaintiff the amount of what the Registrar shall certify to be due for principal and interest;

4. And it is also ordered that the defendant do pay the plaintiff his costs of suit, the same to be taxed in case the parties differ.

FINAL DECREE IN AN ADMINISTRATION SUIT BY NEXT-OF-KIN.

Section 213 of the Code of Civil Procedure.

1. Let the Registrar of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said plaintiff's costs, when so taxed, be paid by the defendant to the plaintiff out of the sum of Rs. , the balance by the said certificate found to be due from the said defendant on account of the personal estate of *E. F.*, the intestate, within one week after the taxation of the said costs by the said Registrar, and let the defendant retain for her own use out of such sum her costs, when taxed.

2. And it is ordered that the residue of the said sum of Rs. , after payment of the plaintiff's and defendant's costs as aforesaid, be paid and applied by defendant as follows:—

(a.)—Let the defendant, within one week after the taxation of the said costs by the Registrar as aforesaid, pay one-third share of the said residue to the plaintiffs, *A. B.*, and *C.*, his wife, in her right, as the sister and one of the next-of-kin of the said *E. F.*, the intestate.

(b.)—Let the defendant retain for her own use one other third share of the said residue, as the mother, and one other of the next-of-kin of the said *E. F.*, the intestate.

(a).—And let the defendant, within one week after the taxation of the said costs by the Registrar as aforesaid, pay the remaining one-third share of the said residue to *G. H.*, as the brother and the other next-of-kin of the said *E. F.*, the intestate.

No. 132.

ORDER—DISSOLUTION OF PARTNERSHIP.
Section 215 of the Code of Civil Procedure.

(*Tille.*)

It is declared that the partnership in the plaint mentioned between the plaintiff and defendant ought to stand dissolved as from the day of , and it is ordered that the dissolution thereof as from that day be advertised in the *Gazette, &c.*

And it is ordered that be the Receiver of the partnership-estate and effects in this suit, and do get in all the outstanding book-debts and claims of the partnership.

And it is ordered that the following accounts be taken :—

1. An account of the credits, property, and effects now belonging to the said partnership ;
2. An account of the debts and liabilities of the said partnership ;
3. An account of all dealings and transactions between the plaintiff and defendant, from the foot of the settled account exhibited in this suit and marked (A), and not disturbing any subsequent settled accounts.

And it is ordered that the good-will of the business heretofore carried on by the plaintiff and defendant as in the plaint mentioned, and the stock-in-trade, be sold on the premises, and that the Registrar may, on the application of any of the parties, fix a reserved bidding for all or any of the lots at such sale, and that either of the parties is to be at liberty to bid at the sale.

And it is ordered that the above accounts be taken, and all the other acts required to be done be completed, before the day of , and that the Registrar do certify the result of the accounts, and that all other acts are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of .

And, lastly, it is ordered that this suit stand adjourned for making a final decree to the day of .

No. 133.

PARTNERSHIP—FINAL DECREE.

Section 215 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No.

A. B., of
against
C. D., of

It is ordered that the fund now in Court, amounting to the sum of Rs. , be applied as follows :—

1. In payment of the debts due by the partnership set forth in the Registrar's certificate, amounting in the whole to Rs.

2. In payment of the costs of all parties in this suit, amounting to Rs. . [These costs must be ascertained before the decree is drawn up.]

3. In payment of the sum of Rs. to the plaintiff as his share of the partnership-assets, of the sum of Rs. , being the residue of the said sum of Rs. now in Court, to the defendant as his share of the partnership-assets.

[Or, And that the remainder of the said sum of Rs. be paid to the said plaintiff [or defendant] in part payment of the sum of Rs. certified to be due to him in respect of the partnership-accounts.]

And that the defendant [or plaintiff] do, on or before the day of , pay to the plaintiff [or defendant] the sum of Rs. , being the balance of the said sum of Rs. due to him, which will then remain due.

No. 134.

CERTIFICATE OF NON-SATISFACTION OF DECREE.

Section 224 of the Code of Civil Procedure.

IN THE COURT OF

AT

Civil Suit, No. of 18 .
A. B., of
against
C. D., of

CERTIFIED that no [or partial, as the case may be, and, if partial, state to what extent] satisfaction of the decree of this Court, in Civil Suit No. of 18 , a copy of which is hereunto attached, has been obtained by execution within the jurisdiction of this Court.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 135.

NOTICE TO SHOW CAUSE WHY EXECUTION SHOULD NOT ISSUE.

Section 248 of the Code of Civil Procedure.

IN THE COURT OF

AT

Civil Suit, No. of 18 .
Miscellaneous, No. of 18 .
A. B., of
against
C. D., of

To

WHEREAS has made application to this Court for execution of decree in Civil Suit No. of 18 , this is to give you

J

notice that you are to appear before this Court on the day of 18 , either in person or by a pleader of this Court, or agent duly authorized and instructed, to show cause, if any, why execution should not be granted.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 136.

WARRANT OF ATTACHMENT OF MOVEABLE PROPERTY IN DEFENDANT'S POSSESSION IN EXECUTION OF A DECREE FOR MONEY.

Section 254 of the Code of Civil Procedure.

(Title.)

TO THE BAILIFF OF THE COURT.

WHEREAS was ordered by decree of this Court, passed on the day of 18 , in Suit No. of 18 , to pay to the plaintiff the sum of Rs.

| DECREE. | | | |
|-----------------------|--|--|--|
| Principal | | | |
| Interest | | | |
| Costs | | | |
| Costs of decree . . . | | | |
| Interest thereon . . | | | |
| Total of attachment . | | | |
| TOTAL . | | | |

as noted in the margin; and whereas the said sum of Rs. has not been paid :

THESE ARE TO COMMAND YOU to attach the moveable property of the said , as set forth in the list hereunto annexed, or which shall be pointed out to you by the said , and, unless the said shall pay to you the said sum of Rs. , together with Rs. ,

the costs of this attachment, to hold the same until further orders from this Court.

YOU ARE FURTHER COMMANDED to return this warrant on or before the day of 18 , with an endorsement certifying the date and manner in which it has been executed, or why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 18 .

Schedule.

L. S.

Judge.

No. 137.

WARRANT TO THE BAILLIFF TO GIVE POSSESSION OF LAND, &c.

Section 263 of the Code of Civil Procedure.

(Title.)

TO THE BAILLIFF OF THE COURT.

WHEREAS , in the occupancy of , has been decreed to , the plaintiff in this suit: you are hereby directed to put the said in possession of the same, and you are hereby authorized (to remove any person) who may refuse to vacate the same.

GIVEN under my hand and the seal of the Court, this
of 18 .

L. S.

Judge.

No. 138.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY TO BE ATTACHED CONSISTS OF MOVEABLE PROPERTY, TO WHICH THE DEFENDANT IS ENTITLED SUBJECT TO A LIEN OR RIGHT OF SOME OTHER PERSON TO THE IMMEDIATE POSSESSION THEREOF.

Section 268 of the Code of Civil Procedure.

(Title.)

To
WHEREAS has failed to satisfy a decree passed against on the day of 18 in favour of for Rs. : it is ordered that the defendant be, and is hereby, prohibited and restrained, until the further order of this Court, from receiving from the following property in the possession of the said , that is to say, , to which the defendant is entitled, subject to any claim of the said , and the said is hereby prohibited and restrained, until the further order of this Court, from delivering the said property to any person or persons whomsoever.

GIVEN under my hand and the seal of the Court, this day
of 18 .

L. S.

Judge.

No. 139.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF DEBTS
NOT SECURED BY NEGOTIABLE INSTRUMENTS.

Section 268 of the Code of Civil Procedure.

(Title.)

To

WHEREAS has failed to satisfy a decree passed against on the day of 18 , in Civil Suit, No. of 18 , in favour of for Rs. : it is ordered that the defendant be, and hereby, prohibited and restrained, until the further order of this Court, from receiving from you a certain debt alleged now to be due from you to the said defendant, namely, and that you, the said be, and you are hereby, prohibited and restrained, until the further order of this Court, from making payment of the said debt, or any part thereof, to any person whomsoever.

GIVEN under my hand and the seal of the Court, this day of 18 .


 L. S.
Judge.

No. 140

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER WHERE THE PROPERTY CONSISTS OF SHARES
IN A PUBLIC COMPANY, &c.

Section 268 of the Code of Civil Procedure.

(Title.)

To

Defendant, and to , Manager of
Company.

WHEREAS has failed to satisfy a decree passed against on the day of 18 , in Civil Suit, No. of 18 , in favour of for Rs. : it is ordered that you, the defendant, be, and you are hereby, prohibited and restrained, until the further order of this Court, from making any transfer of shares in the aforesaid Company, namely, , or from receiving payment of any dividends thereof, and you , the Manager of the said Company, are

hereby prohibited and restrained from permitting any such transfer or making any such payment.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 141.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF IMMOVEABLE PROPERTY.

Section 274 of the Code of Civil Procedure.

(Title.)

To Defendant.

WHEREAS you have failed to satisfy a decree passed against you on the day of 18 , in Civil Suit, No. of 18 , in favour of for Rs. : it is ordered that you, the said , be, and you are hereby, prohibited and restrained, until the further order of this Court, from alienating the property specified in the schedule hereunto annexed, by sale, gift, or otherwise, and that all persons be, and that they are hereby, prohibited from receiving the same by purchase, gift, or otherwise.

GIVEN under my hand and the seal of the Court, this day of 18 ,

Schedule.

L. S.

Judge.

No. 142.

ATTACHMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF MONEY OR OF ANY SECURITY IN THE HANDS OF A COURT OF JUSTICE OR OFFICER OF GOVERNMENT.

Sections 272 and 486 of the Code of Civil Procedure.

IN THE COURT OF AT Civil Suit, No. of 18 .

A. B., of
against
C. D., of

To
SIR,

THE plaintiff having applied, under section of the Code of Civil Procedure, for an attachment of certain money now in your hands

(here state how the money is supposed to be in the hands of the person addressed, on what account, &c.), I request that you will hold the said money subject to the further order of this Court.

I have the honour to be,

SIR,

Your most obedient servant,

Dated the day of 18 .

L. S.

Judge.

No. 143.

ORDER FOR PAYMENT TO THE PLAINTIFF, &c., OF MONEY, &c.,
IN THE HANDS OF A THIRD PARTY.

Section 277 of the Code of Civil Procedure.

IN THE COURT OF AT .

Civil Suit, No. of 18 .

Miscellaneous, No. of 18 .

A. B., of

against

C. D., of

TO THE BAILIFF OF THE COURT AND TO

WHEREAS the following property has been attached in execution of a decree in Civil Suit, No. of 18 , passed on the day of 18 , in favour of for Rs. : it is ordered that the property so attached, consisting of Rs. in money, and Rs. in currency notes, or a sufficient part thereof to satisfy the said decree, shall be paid over by you the said , to ; and that the said property, so far as may be necessary for the satisfaction of the said decree, shall be sold by you, the bailiff of the Court, by public auction, in the manner prescribed for sale in execution of decrees, and that the money which may be realized by such sale, or a sufficient part thereof, to satisfy the said decree, shall be paid over to the said , and the remainder, if any, shall be paid to you, the said .

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 144.

NOTICE TO ATTACHING CREDITOR.

Section 278 of the Code of Civil Procedure.

IN THE COURT OF

AT

Civil Suit, No. of 18 .

Miscellaneous, No. of 18 .

*A. B., of**against**C. D., of*

To

WHEREAS has made application to this Court for the removal of attachment on , placed at your instance in execution of the decree in Civil Suit, No. of 18 , this is to give you notice to appear before this Court on , the day of , 18 , either in person or by a pleader of the Court duly instructed, to support your claim as attaching creditor.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 145.

WARRANT OF SALE OF PROPERTY IN EXECUTION OF A DECREE
FOR MONEY.

Section 287 of the Code of Civil Procedure.

IN THE COURT

AT

Civil Suit, No. of 18 .

Miscellaneous, No. of 18 .

*A. B., of**against**C. D., of*

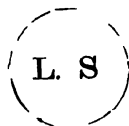
TO THE BAILIFF OF THE COURT.

THESE ARE TO COMMAND YOU to sell by auction, after giving days' previous notice, by affixing the same in this Court-house, and after making due proclamation,* the property attached under a warrant from this Court, dated the day of 18 , in execution of a decree in favour of , in Suit No. of 18 , or so much of the said property as shall realize the sum of Rs. , being the of the said decree and costs still remaining unsatisfied.

* This proclamation shall specify the time, the place of sale, the property to be sold, the revenue assessed, should the property consist of land paying revenue to Government, and the amount for the recovery of which the sale is ordered, and as fairly and accurately as possible the other particulars required by section 287 to be specified.

YOU ARE FURTHER COMMANDED to return this warrant on or before the day of , 18 , with an endorsement certifying the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court this, day of 18 .



Judge.

No. 146.

NOTICE TO PERSON IN POSSESSION OF MOVEABLE PROPERTY
SOLD IN EXECUTION.

Section 300 of the Code of Civil Procedure.

IN THE COURT OF AT .

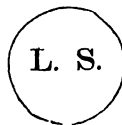
Civil Suit, No. of 18 .

A. B., of
against
C. D., of

To

WHEREAS has been the purchaser at a sale by auction in execution of the decree in the above suit of , now in your possession, you are hereby prohibited from delivering possession of the said to any person except the said .

GIVEN under my hand and the seal of the Court, this day of 18 .



Judge.

No. 147.

PROHIBITORY ORDER AGAINST PAYMENT OF DEBTS SOLD IN EXECUTION
TO ANY OTHER THAN THE PURCHASER.

Section 301 of the Code of Civil Procedure.

IN THE COURT OF AT .

Civil Suit, No. of 18 .

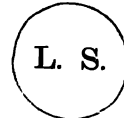
A. B., of
against
C. D., of

To

WHEREAS has become the purchaser at a public sale in execution of the decree in the above suit of certain

debt due from you to you, that is to say, it is ordered that you be, and you are hereby, prohibited from receiving, and you from making payment of, the said debt to any person or persons except the said .

GIVEN under my hand and the seal of the Court, this day of 18 .



Judge.

No. 148.

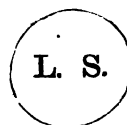
PROHIBITORY ORDER AGAINST THE TRANSFER OF SHARES
SOLD IN EXECUTION.

Section 301 of the Code of Civil Procedure.

IN THE COURT OF AT
Civil Suit, No. of 18 .
A. B., of
against
C. D., of

To
and , Manager of Company.
WHEREAS has become the purchaser, at a public sale in execution of the decree in the above suit, of certain shares in the above Company, that is to say, of , standing in the name of you , it is ordered that you be, and you are hereby, prohibited from making any transfer of the said shares to any person except the said , the purchaser aforesaid, or from receiving any dividends thereon; and you , Manager of the said Company, from permitting any such transfer or making any such payment to any person except the said , the purchaser aforesaid.

GIVEN under my hand and the seal of the Court, this day of 18 .



Judge.

K

THE FOURTH SCHEDULE.

No. 149.

ORDER CONFIRMING SALE OF LAND, &c.

Section 312 of the Code of Civil Procedure.

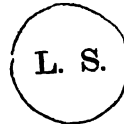
IN THE COURT OF AT .

Civil Suit, No. of 18 .
A. B., of
against
C. D., of

WHEREAS the following land [or immoveable property] was, on the day of 18 , sold by the bailiff of this Court in execution of the decree in this suit; and whereas days have elapsed, and no application has been made [or objection allowed] to the said sale, it is ordered that the said sale be, and the said sale is hereby, confirmed.

GIVEN under my hand and the seal of the Court, this day of 18 .

Schedule.



Judge.

No. 150.

CERTIFICATE OF SALE OF LAND.

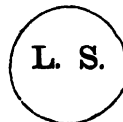
Section 316 of the Code of Civil Procedure.

IN THE COURT OF AT .

Civil Suit, No. of 18 .
A. B., of
against
C. D., of

THIS is to certify that has been declared the purchaser at a sale by public auction, on the day of 18 , of , in execution of decree in this suit, and that the said sale has been duly confirmed by the Court.

GIVEN under my hand and the seal of the Court, this day of 18 .



Judge.

No. 151.

ORDER FOR DELIVERY TO CERTIFIED PURCHASER OF LAND
AT A SALE IN EXECUTION.

Section 318 of the Code of Civil Procedure.

IN THE COURT OF

AT

Civil Suit, No.

of 18 .

A. B., of

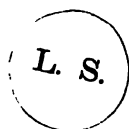
against

C. D., of

TO THE BAILIFF OF THE COURT.

WHEREAS has become the certified purchaser of at
a sale in execution of the decree in Civil Suit, No. of 18 ; and where-
as such land is in the possession of . you are hereby ordered to
put the said , the certified purchaser as aforesaid, into posses-
sion of the said , and, if need be, to remove any person who
may refuse to vacate the same.

GIVEN under my hand and the seal of the Court, this day
of 18 .



Judge.

No. 152.

AUTHORITY TO THE COLLECTOR TO STAY PUBLIC SALE OF LAND.

Section 326 of the Code of Civil Procedure.

IN THE COURT OF

AT

Civil Suit, No.

of 18 .

A. B., of

against

C. D., of

To

Collector of

SIR,

In answer to your communication, No. , dated , repre-
senting that the sale in execution of the decree in this suit of
land, lying within your district, paying revenue to Government, is

objectionable, I have the honour to inform you that you are authorized to make provision for the satisfaction of the said decree in the manner recommended by you instead of proceeding to a public sale of .

I have the honour to be,

SIR,

Your obedient servant,

L. S.

Judge.

No. 153.

**ORDER FOR COMMITTAL FOR RESISTING, &c., EXECUTION OF DECREE
FOR LAND.**

Section 329 of the Code Civil of Procedure.

(*Title.*)

To

WHEREAS it appears to the Court that has, without just cause, resisted [*or obstructed*] the execution of the decree of the Court, passed against on the day of 18 , in Civil Suit, No. of 18 , whereby certain land or immoveable property was adjudged to , it is ordered that the said be committed to custody for a period of days.

GIVEN under my hand and the seal of the Court, this day
of 18 .

L. S.

Judge.

No. 154.

WARRANT OF ARREST IN EXECUTION.

Section 337 of the Code of Civil Procedure.

IN THE COURT OF AT
Civil Suit, No. of 18 .
Miscellaneous, No. of 18 .
A. B., of
against
C. D., of

TO THE BAILIFF OF THE COURT.

WHEREAS was adjudged by a decree of the Court, in

| | | | |
|-------------------|--|--|--|
| Principal | | | |
| Interest | | | |
| Costs | | | |
| Execution | | | |
| TOTAL | | | |

No. of 18 , dated 18 ,
to pay to the plaintiff the sum of
Rs. as noted in the margin, and
whereas the said sum of Rs.
has not been paid to the said plaintiff
in satisfaction of the said decree,
these are to command you to arrest
the said defendant, and, unless the
said defendant shall pay to you the
said sum of Rs. together with
Rs. for the costs of executing
this process, to bring the said de-

fendant before the Court with all convenient speed.

You are further commanded to return this warrant on or before
the day of 18 , with an endorsement certifying the day and
manner in which it has been executed, or the reason why it has not
been executed.

GIVEN under my hand and the seal of the Court, this day
of 18 .

L. S.

Judge.

No. 155.

NOTICE OF PAYMENT INTO COURT.

Section 377 of the Code of Civil Procedure.

IN THE COURT OF 18 .
B. No.

A. B. v. C. D.

TAKE notice that the defendant has paid into Court Rs. , and
says that that sum is enough to satisfy the plaintiff's claim [or the
plaintiff's claim for, &c.].

To Mr. X. Z.,

the Plaintiff's Pleader,

Z.,

Defendant's Pleader.

No. 156.

COMMISSION TO EXAMINE ABSENT WITNESSES.

Section 386 of the Code of Civil Procedure.

IN THE COURT OF AT .
 Civil Suit, No. of 18 .
 A. B., of
 against
 C. D., of

To

WHEREAS the evidence of is required by the in
 the above suit; and whereas , you are requested to take the exa-
 mination on interrogatories [or vivâ voce] of such witnesses , and
 you are hereby appointed a Commissioner for that purpose, and you
 are further requested to make return of such examination so soon as it
 may be taken [process to require the attendance of the witness will be
 issued by this Court on your application].*

GIVEN under my hand and the seal of the Court, this day
 of 18 .

L. S.

Judgs.

No. 157.

COMMISSION FOR A LOCAL INVESTIGATION, OR TO EXAMINE
ACCOUNTS.

Sections 392 and 394 of the Code of Civil Procedure.

IN THE COURT OF AT .
 Civil Suit, No. of 18 .
 A. B., of
 against
 C. D., of

To

WHEREAS it is deemed requisite, for the purposes of this suit, that
 a commission for should be issued, you are hereby appointed
 Commissioner for the purpose of [process to compel the attend-
 ance before you of any witnesses, or for the production of any documents
 which you may desire to examine or inspect, will be issued by this Court
 on your application].*

* Not necessary where the commission goes to another Court.

A sum of Rs. , being your fee in the above, is herewith forwarded.

GIVEN under my hand and the seal of the Court, this day
of 18 .

L. S.

Judge.

No. 158.

WARRANT OF ARREST BEFORE JUDGMENT.

Section 478 of the Code of Civil Procedure.

IN THE COURT OF AT
Civil Suit, No. of 18 .
A. B., of
against
C. D., of

TO THE BAILIFF OF THE COURT.

WHEREAS , the plaintiff in the above suit, has proved, to the satisfaction of the Court, that there is probable cause for believing that the defendant is about to , these are to command you to take the said into custody, and to bring before the Court, in order that he may show cause why he should not furnish security to the amount of rupees for personal appearance before the Court, until such time as the said suit shall be fully and finally disposed of, and until execution or satisfaction of any decree that may be passed against in the suit.

GIVEN under my hand and the seal of the Court, this day
of 18 .

L. S.

Judge.

No. 159.

ORDER FOR COMMITTAL.

Section 481 of the Code of Civil Procedure.

IN THE COURT OF AT
Civil Suit, No. of 18 .
A. B., of
against
C. D., of

To

WHEREAS , plaintiff in this suit, has made application to the Court that security be taken for the appearance of the

defendant to answer any judgment that may be passed against
in the suit; and whereas the Court has called upon the
defendant to furnish such security, or to offer a sufficient
deposit in lieu of security, which has failed to do; it is ordered
that the said defendant be committed to custody until the
decision of the suit, or, if judgment be given against , until the
execution of the decree.

GIVEN under my hand and the seal of the Court, this day
of 18 .

L. S.

Judge.

No. 160.

[ATTACHMENT BEFORE JUDGMENT WITH ORDER TO CALL FOR SECURITY
FOR FULFILMENT OF DECREE.

Section 484 of the Code of Civil Procedure.

IN THE COURT OF

AT

Civil Suit, No.

of 18 .

A. B., of

against

C. D., of

TO THE BAILIFF OF THE COURT.

WHEREAS has proved, to the satisfaction of the Court, that
the defendant in the above suit , these are to command you to
call upon the said defendant , on or before the day of
, either to furnish security for the sum of rupees to produce
and place at the disposal of this Court, when required , or the
value thereof, or such portion of the value as may be sufficient to fulfil
any decree that may be passed against , or to appear and show
cause why should not furnish security; and you are further
ordered to attach the said , and keep the same under safe and
secure custody until the further order of the Court, and in what manner
you shall have executed this warrant make appear to the Court imme-
diately after the execution hereof, and have you here then this warrant.

Given under my hand and the seal of the Court, this day
of 18 .

L. S.

Judge.

No. 161.*

ATTACHMENT BEFORE JUDGMENT, ON PROOF OF FAILURE
TO FURNISH SECURITY.

Section 485 of the Code of Civil Procedure.

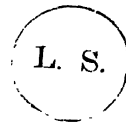
IN THE COURT OF AT

Civil Suit, No. of 18 .
A. B., of
against
C. D., of

TO THE BAILIFF OF THE COURT.

WHEREAS , the plaintiff in this suit, has applied to the Court to call upon , the defendant, to furnish security to fulfil any decree that may be passed against in the suit, and whereas the Court has called upon the said to furnish such security, which has failed to do . ; these are to command you to attach , the property of the said , and keep the same under safe and secure custody until the further order of the Court, and in what manner you shall have executed this warrant make appear to this Court immediately after the execution hereof, and have you here then this warrant.

GIVEN under my hand and the seal of the Court, this day of
18 .



Judge.

No. 162.

ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY TO BE ATTACHED
CONSISTS OF MOVEABLE PROPERTY, TO WHICH THE DEFEND-
ANT IS ENTITLED, SUBJECT TO A LIEN OR RIGHT OF
SOME OTHER PERSONS TO THE IMMEDIATE
POSSESSION THEREOF.

Section 486 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .
A. B., of
against
C. D., of

To

Defendant.

It is ordered that you, the said , be, and you are hereby,
prohibited and restrained, until the further order of this Court, from

L

receiving from the following property in the possession of the said , that is to say, , to which the defendant is entitled, subject to any claim of the said , and the said is hereby prohibited and restrained, until the further order of this Court, from delivering the said property to any persons whomsoever.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 163.

ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF IMMOVEABLE PROPERTY.

Section 486 of the Code of Civil Procedure.

IN THE COURT OF AT .

Civil Suit, No. of 18 .

A. B., of

against

C. D., of

To

Defendant.

It is ordered that you, the said , be, and you are hereby, prohibited and restrained, until the further order of this Court, from alienating the property specified in the schedule hereunto annexed, by sale, gift, or otherwise, and that all persons be, and that they are hereby, prohibited from receiving the same by purchase, gift, or otherwise.

GIVEN under my hand and the seal of the Court, this day of 18 .

Schedule.

L. S.

Judge.

No. 164.

ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF MONEY
IN THE HANDS OF OTHER PERSONS, OR OF DEBTS NOT
BEING NEGOTIABLE INSTRUMENTS.

Section 486 of the Code of Civil Procedure.

IN THE COURT OF AT
Civil Suit, No. of 18 .
A. B., of
against
C. D.,

To

It is ordered that the defendant _____ be, and he is hereby, prohibited and restrained, until the further order of this Court, from receiving from _____ the [money now in _____ hands belonging to the said defendant, or debts, as the case may be, describing them], and that the said _____ be, and _____, hereby prohibited and restrained, until the further order of this Court, from making payment of the said [money, &c.], or any part thereof, to any person whomsoever.

GIVEN under my hand and the seal of the Court, this day
of 18 .

L. S.

Judge.

No. 165.

ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF SHARES IN A PUBLIC COMPANY, &C.

Section 486 of the Code of Civil Procedure.

IN THE COURT OF AT
Civil Suit, No. of 18 .
A. B., of
against
. *C. D., of*

To Manager of Defendant, and to Company.

It is ordered that _____, the defendant, be, and _____, hereby prohibited and restrained, until the further order of the Court, from making any transfer of _____ shares, being _____ in the aforesaid _____.

Company, or from receiving payment of any dividends thereof, and you
 , Manager of the said Company, are hereby prohibited and
 restrained from permitting any such transfer, or making any such pay-
 ment.

GIVEN under my hand and the seal of the Court this day
 of 18 .



Judge.

No. 166.

TEMPORARY INJUNCTIONS.

Section 492 of the Code of Civil Procedure.

UPON motion made unto this Court by , pleader of [or
 Counsel for] the plaintiff, A.B., and upon reading the petition of the said
 plaintiff in this matter, filed [this day] [or the plaint filed in this cause
 on the day of , or the written statement of the said plaintiff,
 filed on the day of], and upon hearing the evidence of
 and in support thereof [*if after notice and defend-*
ant not appearing : add, and also the evidence of as to service of
 notice of this motion upon the defendant, C. D.]: This Court doth
 order that an injunction be awarded to restrain the defendant, C. D., his
 servants, workmen, and agents, from pulling down, or suffering to be
 pulled down, the house in the plaint in the said suit of the plaintiff
 mentioned [or in the written statement, or petition, of the plaintiff and
 evidence at the hearing of this motion mentioned], being No. 9, Oil-
 mongers' Street, Hindúpur, in the taluq of , and from selling the
 materials whereof the said house is composed, until the hearing of this
 cause, or until the further order of this Court.

Dated this day of 18 .

Civil Judge.

[Where the injunction is sought to restrain the negotiation of a
 note or bill, the ordering part of the order may run thus :—]

to restrain the defendants and from parting with out
 of the custody of them or any of them, or endorsing, assigning, or nego-
 tiating the promissory note [or bill of exchange] in question, dated on
 or about the , &c., mentioned in the plaintiff's plaint [or peti-
 tion] and the evidence heard at this motion, until the hearing of this
 cause, or until the further order of this Court.

[In Copyright cases] to restrain the defendant, C. D., his
 servants, agents, or workmen, from printing, publishing, or vending a
 book, called , or any part thereof, until the, &c.

[Where part only of a book is to be restrained] to restrain
 the defendant, C. D., his servants, agents, or workmen, from printing,
 publishing, selling, or otherwise disposing of such parts of the book in

the plaint [or petition and evidence, &c.], mentioned to have been published by the defendant as hereinafter specified, namely, that part of the said book which is entitled _____, and also that part which is entitled [or which is contained in page _____ to page _____ both inclusive], until the _____, &c.

[In Patent cases] _____ to restrain the defendant, *C. D.*, his agents, servants, and workmen, from making or vending any perforated bricks (or as the case may be) upon the principle of the inventions in the plaintiff's plaint [or petition, &c., or written statement, &c.] mentioned, belonging to the plaintiffs, or either of them, during the remainder of the respective terms of the patents in the plaintiff's plaint [or as the case may be] mentioned, and from counterfeiting, imitating, or resembling the same inventions, or either of them, or making any addition thereto, or subtraction therefrom, until the hearing, &c.

[In cases of Trade-marks] _____ to restrain the defendant, *C. D.*, his servants, agents, or workmen, from selling, or exposing for sale, or procuring to be sold, any composition or blacking [or as the case may be] described as or purporting to be blacking manufactured by the plaintiff, *A. B.*, in bottles having affixed thereto such labels as in the plaintiff's plaint [or petition, &c.] mentioned, or any other labels so contrived or expressed as, by colourable imitation or otherwise, to represent the composition or blacking sold by the defendant to be the same as the composition or blacking manufactured and sold by the plaintiff, *A. B.*, and from using trade-cards so contrived or expressed as to represent that any composition or blacking sold or proposed to be sold by the defendant is the same as the composition or blacking manufactured or sold by the plaintiff, *A. B.*, until the, &c.

[To restrain a Partner from, in any way, interfering in the business] _____ to restrain the defendant, *C. D.*, his agents and servants, from entering into any contract, and from accepting, drawing, endorsing, or negotiating any bill of exchange, note, or written security, in the name of the partnership-firm of *B. & D.*, and from contracting any debt, buying and selling any goods, and from making or entering into any verbal or written promise, agreement, or undertaking, and from doing, or causing to be done, any act, in the name or on the credit of the said partnership-firm of *B. & D.*, or whereby the said partnership-firm can or may in any manner become or be made liable to or for the payment of any sum of money, or for the performance of any contract, promise, or undertaking, until the, &c.

No. 167.

NOTICE OF APPLICATION FOR INJUNCTION.
Section 494 of the Code of Civil Procedure.

IN THE COURT OF

AT

A. B., of
against
C. D., of

TAKE notice that I, *A. B.*, intend to apply, at the sitting of the Court at _____ aforesaid, on the _____ day of _____, for an injunc-

tion to restrain *C. D.* from further prosecuting a suit which he has commenced against me in , to recover damages for the breach of the contract for the specific performance of which this suit was commenced [or to restrain him from receiving and giving discharges for any of the debts due to the partnership in the matter of the partnership between us for the winding-up of which the suit was commenced, or from digging the turf from the land which was agreed to be sold by him to me by the agreement, the specific performance of which this suit is commenced to enforce, or as the case may be].

Dated this day of 18 .

To *C. D.*

A. B.

[*N. B.*—Where the injunction is to be applied for against a party whose name and address do not appear upon any proceeding already filed in the suit, such name and address must be stated in full to enable the proper officer to serve the notice.]

No. 168.

APPOINTMENT OF A RECEIVER.

Section 503 of the Code of Civil Procedure.

IN THE COURT OF AT .

Civil Suit, No. of 18 .

A. B., of

, against

C. D., of

To

WHEREAS has been attached in execution of a decree passed in the above suit on the day of 18 , in favour of : you are hereby (subject to your giving security to the satisfaction of the Registrar) appointed Receiver of the said property under section 503 of the Code of Civil Procedure, with full powers under the provisions of that section.

YOU are required to render a due and proper account of your receipts and disbursements in respect of the said property on . You will be entitled to remuneration at the rate of per cent. upon your receipts under the authority of this appointment.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 169.

BOND TO BE GIVEN BY RECEIVER.

Section 503 of the Code of Civil Procedure.

IN THE COURT OF

AT

Civil Suit, No. of 18 .

A. B., of

against

C. D., of

KNOW all men by these presents, that we, *I. J.*, of, &c., and *K. L.*, of, &c., and *M. N.*, of, &c., are jointly and severally bound to *G. H.*, Registrar of the Court of , in Rs. , to be paid to the said *G. H.*, or his attorney, executors, administrators, or assigns. For which payment to be made we bind ourselves, and each of us, in the whole, our and each of our heirs, executors, and administrators, jointly and severally by these presents.

Dated this day of 18 .

And whereas a plaint has been filed in this Court by *A. B.* against *C. D.* for the purpose of [*here insert object of suit*];

And whereas the said *I. J.* has been appointed, by order of the above-mentioned Court, to receive the rents and profits of the immovable property, and to get in the outstanding moveable property of *O. P.*, the testator in the said plaint named ;

Now the condition of this obligation is such, that if the above-bounden *I. J.* shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the immovable property, and in respect of the moveable property of the said *O. P.* [*or as the case may be*] at such periods as the said Court shall appoint, and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court hath directed or shall hereafter direct, then this obligation shall be void, otherwise it shall remain in full force.

I. J.

K. L.

M. N.

Signed and delivered by the above-bounden in the presence of

NOTE.—If deposit of money be made, the memorandum thereof should follow the terms of the condition of the bond.

No. 170.

ORDER OF REFERENCE TO ARBITRATION UNDER AGREEMENT OF PARTIES.

Section 508 of the Code of Civil Procedure.

(Title.)

To

WHEREAS the above-mentioned plaintiff and defendant have agreed to refer the matters in difference between them in the above suit to

your arbitration and award, you are hereby appointed accordingly to determine all the said matters in difference between the parties, and with power, by consent of the parties, to determine which party shall pay the costs of this reference.

You are required to deliver your award in writing to this Court on or before the day of 18, or such other day as this Court may further fix.

Process to compel the attendance before you of any witnesses, or for the production of any documents which you may desire to examine or inspect, will be issued by this Court on your application, and you are empowered to administer to such witnesses oath or affirmation.

A sum of Rs. , being your fee in the above suit, is herewith forwarded.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 171.

ORDER OF REFERENCE TO ARBITRATION BY COURT, WITH CONSENT.

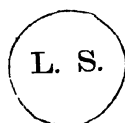
Section 508 of the Code of Civil Procedure.

(Title.)

UPON reading a petition of the plaintiff, filed this day, and on the consent of for the defendant, and upon hearing for the plaintiff, and for the defendant, it is ordered, by and with the consent of all the parties, that all matters in difference in this suit, including all dealings and transactions between all parties, be referred to the final determination of , who is to make his award in writing, and submit the same to this Court, together with all proceedings, depositions, and exhibits in this suit, within one month from the date hereof. And it is ordered further, by and with the like consent, that the said arbitrator is to be at liberty to examine the parties and their witnesses upon oath or affirmation, which he is empowered to administer, and that the said arbitrators shall have all such powers or authorities as are vested in arbitrators under the Code of Civil Procedure, including therein power to call for all books of account that he may consider necessary. And it is further ordered, by and with the like consent, that the costs of this suit, together with the costs of reference to arbitration, up to and including the award of the said arbitrator, and the enforcement thereof, do abide the result of the finding of the said arbitrator. And it is further ordered, by and with the like consent, that the said arbitrator be at liberty to appoint a competent accountant to assist him in the investigation of the several matters referred to him as aforesaid,

and that the remuneration of such accountant and other charges attending thereto be in the discretion of the said arbitrator.

GIVEN under my hand and the seal of the Court, this day
of 18 .



Judge.

No. 172.

SUMMONS IN SUMMARY SUIT ON NEGOTIABLE INSTRUMENT.

Section 532 of the Code of Civil Procedure.

No. OF SUIT.

IN THE COURT

AT

Plaintiff.
Defendant.

To [*Here enter the defendant's name, description, and address.*]

WHEREAS [*here enter the plaintiff's name, description, and address*] has instituted a suit in this Court against you under Chapter XXXIX. of the Code of Civil Procedure for Rs. principal and interest [*or* Rs. balance of principal and interest] due to him as the payee [*or* endorsee] of a bill of exchange [*or* hundi, *or* promissory note], of which a copy is hereto annexed, you are hereby summoned to obtain leave from the Court within ten days from the service hereof, inclusive of the day of such service, to appear and defend the suit, and within such time to cause an appearance to be entered for you. In default whereof the plaintiff will be entitled at any time after the expiration of such ten days to obtain a decree for any sum not exceeding the sum of Rs. [*here state the sum claimed*] and the sum of Rs. for costs.

Leave to appear may be obtained on an application to the Court, supported by affidavit or declaration showing that there is a defence to the suit on the merits, or that it is reasonable that you should be allowed to appear in the suit.

[*Here copy the bill of exchange, hundi, or promissory note, and all endorsements upon it.*]

No. 173.

MEMORANDUM OF APPEAL.

Section 541 of the Code of Civil Procedure.

MEMORANDUM OF APPEAL.

(*Name, &c., as in Register.*) Plaintiff—Appellant.

(*Name, &c., as in Register.*) Defendant—Respondent.

[*Name of Appellant*] [plaintiff *or* defendant] above-named appeals to the High Court at [*or* District Court at , *as the case may be*] against the decree of in the above suit, dated the day of , or the following reasons, namely [*here state the grounds of objection*].

M

No. 175.

NOTICE TO RESPONDENT OF THE DAY FIXED FOR THE HEARING
OF THE APPEAL.

Section 553 of the Code of Civil Procedure.

IN THE COURT OF AT .

, *Appellant*, v. , *Respondent*.

APPEAL from the of the Court of , dated the
day of 18 .

To *Respondent*.

TAKE notice that an appeal from the decree of in this case
has been presented by and registered in this Court, and that
the day of 18 has been fixed by this Court for the hear-
ing of this appeal.

If no appearance is made on your behalf by yourself, your pleader,
or by some one by law authorized to act for you in this appeal, it will
be heard and decided *ex parte* in your absence.

GIVEN under my hand and the seal of the Court, this day
of 18 .

L. S.

Judge.

[NOTE.—If a stay of execution has been ordered, intimation should be given of the
fact on this notice.]

No. 176

DECREE ON APPEAL.

Section 579 of the Code of Civil Procedure.

IN THE COURT OF AT .

, *Appellant*, v. , *Respondent*.

Appeal from the of the Court of , dated the
day of 18 .

Memorandum of Appeal.

, *Plaintiff*.

, *Defendant*.

Plaintiff [or defendant] above-named appeals to the Court at
against the decree of in the above suit, dated the
day of 18 , for the following reasons, namely:

[*here state the reasons*]

This appeal coming on for hearing on the day of 18 ,
before , in the presence of for the appellant, and of
for the respondent, it is ordered—

[*here state the relief granted*]

The costs of this appeal, amounting to , are to be paid by .

The costs of the original suit are to be paid by .

GIVEN under my hand this day of 18 .

L. S.

Judge.

**REGISTER OF APPEALS FROM APPELLATE DECREES,
Section 587 of the Code of Civil Procedure.**

HIGH COURT AT

REGISTER OF APPEALS FROM APPELLATE DECREES.

THE FOURTH SCHEDULE.

[illegible]

No. 178.*

NOTICE TO SHOW CAUSE WHY A REVEIW SHOULD NOT BE GRANTED.

Section 626 of the Code of Civil Procedure.

IN THE COURT OF

AT

, *Plaintiff*,

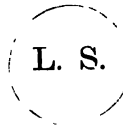
v.

, *Defendant*.

To

TAKE notice that has applied to this Court for a review of its judgment passed on the day of 18 in the above case. The day of 18 is fixed for you to show cause why the Court should not grant a review of its judgment in this case.

GIVEN under my hand and the seal of the Court, this day of 18 .



Judge.

No. 179.

NOTICE OF CHANGE OF PLEADER.

IN THE COURT OF

AT

A. B., of

against.

C. D., of

TO THE REGISTRAR OF THE COURT.

TAKE notice that I, *A. B.* [*or C. D.*], have hitherto employed as my pleader *G. H.*, of , in the above-mentioned cause, but that I have ceased to employ him, and that my present pleader is *J. K.*, of

A. B. [*or C. D.*].

No. 180.

MEMORANDUM TO BE PLACED AT FOOT OF EVERY SUMMONS,

NOTICE, DECREE, OR ORDER OF COURT, OR ANY OTHER

PROCESS OF THE COURT.

Hours of attendance at the office of the Registrar [*place of office*] from *ten till four*, except on [*here insert the day on which the office will be closed*], when the office will be closed at *one*.

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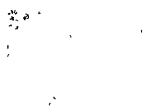
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APPENDIX,

CONTAINING

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THE MOFUSSIL SMALL CAUSE COURTS' ACT,

XI. of 1865 ;

THE GENERAL STAMP ACT,

XVIII. of 1869 ;

THE COURT FEES' ACT,

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THE EVIDENCE ACT,

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THE ROYAL CHARTER ACT ;

THE LETTERS PATENT

Constituting the High Courts of

Bengal, Madras, Bombay, and the N. W. Provinces ;

THE SPEECH OF SIR ARTHUR HOBHOUSE

On the passing of the New Code of Civil Procedure.

THE CARRIERS' ACT,

No. III OF 1865.

[Received the Governor-General's assent on the 14th February 1865.]

AN ACT RELATING TO THE RIGHTS AND LIABILITIES OF COMMON CARRIERS.*

WHEREAS it is expedient not only to enable common carriers to limit their liability for loss of or damage to property delivered to them to be carried, but also to declare their liability for loss of or damage to such property occasioned by the negligence or criminal acts of themselves, their servants or agents; It is enacted as follows :—

| | |
|------------------------|---|
| Short title. | 1. This Act may be cited as "The Carriers' Act, 1865." |
| Interpretation-clause. | 2. In this Act, unless there be something repugnant in the subject or context— "Common carrier" denotes a person, other than the Government,† engaged in the business of transporting for hire property from place to place, by land or inland navigation, for all persons indiscriminately. "Person." "Person" includes any association or body of persons, whether incorporated or not. Number. Words in the singular number include the plural, and words in the plural include the singular. |

3. No common carrier shall be liable for the loss of or damage to property delivered to him to be carried exceeding in value one hundred rupees and of the description contained in the schedule to this Act, unless the person delivering such property to be carried, or some person duly authorized in that behalf, shall have expressly declared to such carrier or his agent the value and description thereof.‡

* Declared to apply to the whole of British India, except the scheduled districts, Act XV of 1874.

† See 3 N. W. P. 198.

‡ "The earlier sections extend to India the principle embodied in the English Statute 11 Geo. IV and 1 Wm. IV. c. 68."—*Statement of Objects and Reasons.*

4. Every such carrier may require payment for the risk undertaken in carrying property exceeding in value one hundred rupees and of the description aforesaid, at such rate of charge as he may fix: Provided that, to entitle such carrier to payment at a rate higher than his ordinary rate of charge, he shall have caused to be exhibited in the place where he carries on the business of receiving property to be carried, notice of the higher rate of charge required, printed or written in English and in the vernacular language of the country wherein he carries on such business.

Proviso.
caused to be exhibited in the place where he carries on the business of receiving property to be carried, notice of the higher rate of charge required, printed or written in English and in the vernacular language of the country wherein he carries on such business.

5. In case of the loss of or damage to property exceeding in value one hundred rupees and of the description aforesaid delivered to such carrier to be carried, when the value and description thereof shall have been required in manner provided for by this Act, the person entitled to recover in respect of such loss or damage shall also be entitled to recover any money actually paid to such carrier in consideration of such risk as aforesaid.

6. The liability of any common carrier for the loss of or damage to any property delivered to him to be carried, not being of the description contained in the schedule to this Act, shall not be deemed to be limited or affected by any public notice; but any such carrier, not being the owner of a railroad or tramroad constructed under the provisions of Act X of 1870* (*for the acquisition of land for public purposes and for companies*), may, by special contract, signed by the owner of such property so delivered as last aforesaid or by some person duly authorized in that behalf by such owner, limit his liability in respect of the same.

7. The liability of the owner of any railroad or tramroad constructed under the provisions of the said Act X of 1870,* for the loss of or damage to any property delivered to him to be carried, not being of the description contained in the schedule to this Act, shall not be deemed to be limited or affected by any special contract; but the owner of such railroad or tramroad shall be liable for the loss of or damage to property delivered to him to be carried only when such loss or damage shall have been caused by negligence or a criminal act on his part or on that of his agents or servants.

When such owner answerable for loss or damage.
road shall be liable for the loss of or damage to property delivered to him to be carried only when such loss or damage shall have been caused by negligence or a criminal act on his part or on that of his agents or servants.

8. Notwithstanding anything hereinbefore contained, every common carrier shall be liable to the owner for loss of or damage to any property delivered to such carrier to be carried where such loss or damage shall have arisen from the negligence or criminal act of the carrier or any of his agents or servants.

* See Act X of 1870, sec. 2.

9. In any suit brought against a common carrier for the loss, damage, or non-delivery of goods entrusted to him for carriage, it shall not be necessary for the plaintiff to prove that such loss, damage, or non-delivery was owing to the negligence or criminal act of the carrier, his servants or agents.*

10. Nothing in this Act shall affect the provisions contained in the ninth, tenth, and eleventh sections of Act No. XVIII of 1854 (*relating to Railways in India*).

SCHEDULE.

Gold and silver coin; gold and silver in a manufactured or unmanufactured state; precious stones and pearls; jewellery; time-pieces of any description; trinkets; bills and hundis; currency-notes of the Government of India, or notes of any banks, or securities for payment of money, English or foreign; stamps and stamped paper; maps, prints, and works of art; writings; title-deeds; gold or silver plate or plated articles; glass; china; silk in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials; shawls and lace; cloths and tissues embroidered with the precious metals, or of which such metals form part; articles of ivory, ebony, or sandal-wood.

* This is in accordance with the English common law. See *Ross v. Hill*, 2 Com. B. 90; *Richards v. Lond., Brighton, & S. C. Ry. Co.*, 7 Com. B. 839.

THE MOFUSSIL SMALL CAUSE COURTS ACT,

No. 3. 1865.*

[Received the Governor-General's assent on the 15th March 1865.]

An Act to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature.

[As amended by Acts Nos. X of 1867, VII of 1870, XIV of 1870, VI of 1871, VIII of 1872, III of 1873, and X of 1877.]

WHEREAS it is expedient to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature. It is enacted as follows:—

Interpretation-clause. 1. In this Act, unless there be something repugnant in the subject or context—

Number. Words importing the singular number include the plural, and words importing the plural number

Gender. Words importing the masculine gender include females.

"Judge." "Judge" includes an Acting Judge.

"Section." "Section" means a section of this Act.

"Court of Small Causes." "Court of Small Causes" means a Court constituted under this Act.

And, in every part of British India in which this Act operates, "Local Government" denotes the person authorized to administer the Executive Government in such part, and

"High Court." "High Court" denotes the highest Civil Court of appeal having jurisdiction therein.

2. * * * * Any Courts of Small Causes now in existence, which shall constitute under Act No. XLII of 1860, shall be considered as constituted under this Act within the territorial limits of the jurisdiction assigned to such Courts under the said Act XLII of 1860, or which may hereafter be assigned to them under the next following Act, and shall be subject to all the provisions contained therein * * *. †

* Declared to apply to the whole of British India, except the scheduled districts, Act XV of 1874.

* † See Act XIV of 1870.

3. The Local Government* may, with the previous sanction of the Constitution of Small Governor-General of India in Council, constitute, Cause Courts. for the trial of suits under this Act, Courts of

Small Causes, with such establishment of officers as may be necessary, at any Limits of their territorial jurisdiction to be fixed by the Local Government. Whenever a Court of Small Causes shall be so constituted, the Local Government shall fix the territorial limits of the jurisdiction of such Court, and may from time to time alter the limits so fixed. The Local Government may abolish any Court of Small Causes.

4. Every Court of Small Causes shall use a seal bearing the following Seal of the Court. inscription in English and in the language of the Court—"Court of Small Causes of the _____",—and

Courts to be generally subject to the High Court. shall be subject to the general control and orders of the High Court.

5. Courts of Small Causes shall be held at such place or places within the local limits of their respective jurisdictions as shall from time to time be appointed by the Local Government. Places where Courts to be held.

6. The following are the suits which shall be cognizable by Courts of Suits cognizable by Small Cause Courts. Small Causes—namely, claims for money due on bond or other contract, or for rent, or for personal property, or for the value of such property, or for damages, when the debt, damage, or demand does not exceed in amount or value the sum of five hundred rupees, whether on balance of account or otherwise :

Provided that no action shall lie in any such Court—

(1) On a balance of partnership account, unless the balance shall have been struck by the parties or their agents :

(2) For a share or part of a share under an intestacy, or for a legacy or part of a legacy under a will :

(3) For the recovery of damages on account of an alleged personal injury, unless actual pecuniary damage shall have resulted from the injury :

(4) For any claim for the rent of land or other claim for which a suit may now be brought before a Revenue Officer, unless, as regards arrears of rent for which such suit may be brought, the Judge of the Court of Small Causes shall have been expressly invested by the Local Government with jurisdiction over claims to such arrears.

7. The Local Government may extend the jurisdiction of any Court of Small Causes, in suits of the nature described in the last preceding section, and thereby made cognizable by Courts of Small Causes, to an amount not exceeding one thousand rupees. Power to extend jurisdiction of Small Cause Courts to rupees one thousand.

8—11. [*Repealed by Act X of 1877.*]

12. Wherever a Court of Small Causes is constituted under this Act, no Suits cognizable by a Court of Small Causes not to be heard by any other Court having jurisdiction within the local limits. suit cognizable by such Court shall be heard or determined in any other Court having jurisdiction within the local limits of the jurisdiction of such Court of Small Causes : Provided that nothing in this Act shall be held to take away the jurisdiction which a

* This does not include a Chief Commissioner, 6 Beng. 201. But, in Burma, see Act VII of 1872, sec. 18.

Saving of jurisdiction of Magistrates as to debts.

Of Village Munsifs and Village or District Panchá-yats in Madras.

Of Military Courts of Requests.

under Act III of 1859 (for *Cantonment Joint-Magistrates*, and for constituting those officers Registrars of Deeds); or by a single officer duly authorized and appointed under the rules in

Of Officers appointed to try small suits in Madras and Bombay.

troops of those Presidencies

Or of Military Pancháyats in Madras.

Magistrate, of a person exercising the powers of a Magistrate, or an Assistant or Deputy Magistrate, can now exercise in regard to debts or other claims of a civil nature; or the jurisdiction which can be exercised by Village Munsifs, or Village or District Pancháyats, under the provisions of the Madras Code; or by Military Courts of Requests, or by Cantonment Joint-Magistrates invested with civil jurisdiction under *conferring civil jurisdiction in certain cases upon* *for constituting those officers Registrars of* force in the Presidencies of Madras and Bombay respectively, for the trial of small suits in military bázars, in cantonments, and stations occupied by the troops of those Presidencies respectively; or by Pancháyats in regard to suits against military persons, according to the rules in force in the Presidency of Madras.

13. Every Court of Small Causes shall (except as hereinafter provided) be held before a Judge appointed by the Local Government, and who shall receive such salary as the Governor-General of India in Council may from time to time determine. Such Judge shall be the Judge either of one such Court or of two or more such Courts as the Local Government shall appoint, but, except as hereinafter provided, he shall not exercise any civil jurisdiction except under the provisions of this Act.

14. It shall be lawful for any Judge who is the Judge of two or more Courts of Small Causes to fix, subject to the orders of the Local Government, or, in territories under the immediate administration of the Government of India, of the Chief Commissioner, or other Principal Civil Authority, the times at which he will go on circuit, and the dates on which his sittings in the several Courts of which he is Judge shall commence. Notice of such times and dates shall be published in the official Gazette, and at such place and in such manner as the Local Government or Chief Commissioner or other Authority as aforesaid shall think fit to direct in that behalf.

15. The Local Government may from time to time invest any person with the powers of a Judge of a Court of Small Causes under this Act for a limited period, or for specific periods in each year only, and declare in what Court or Courts of Small Causes such powers shall be exercised by such person. Any person so invested shall, in all Courts in which the Local Government shall have declared that he shall exercise the said powers, have all such powers as might in such Courts be exercised by a Judge of the said Courts appointed under the thirteenth section.

16. If it shall be declared by the Local Government that any person invested under the last preceding section with the powers of a Judge of a Court of Small Causes shall exercise those powers in a Court of which there is a Judge appointed under the thirteenth section, the person so invested shall exercise a jurisdiction concurrent with that of such Judge. The Local Government shall from time to time make rules

to provide for the distribution of business between any person so invested and any Judge in whose Court it may be declared that such person shall exercise his powers, and generally for regulating and defining the duties and relative positions of Judges of Courts of Small Causes and persons so invested as aforesaid: Provided always that no such rule shall be in any way inconsistent with the provisions of this Act.

17. Every person invested with the powers of a Judge of a Court of Small Causes under the fifteenth section shall receive such remuneration as the Governor-General in Council shall from time to time determine. It shall not be lawful for any such person to practise as a barrister, attorney, vakil, pleader, or law-agent in any district or place within the territorial limits of which he is empowered to exercise the powers with which he is invested.

18. In all suits under this Act the summons to the defendant shall be for the final disposal of the suit, and no written statement other than the plaint shall be received unless required by the Court.

19. When a decree is passed in any suit of the nature and amount cognizable under this Act, the Court passing the decree may, at the same time that it passes the decree, on the verbal application of the party in whose favour the decree is given, order immediate execution thereof by the issue of a warrant directed either against the person of the judgment-debtor if he is within the local limits of the jurisdiction of the Court passing the decree, or against the movable property of the judgment-debtor within the same limits. If the warrant be directed against the movable property of the judgment-debtor, it may be general against any personal property of the judgment-debtor wherever it may be found within the local limits of the jurisdiction of the Court, or special against any personal property belonging to the judgment-debtor within the same limits, and which shall be indicated by the judgment-creditor.

20. In the execution of a decree under this Act, if, after the sale of the movable property of a judgment-debtor, any portion of a judgment-debt shall remain due, and the holder of the judgment desire to issue execution upon any immovable property belonging to the judgment-debtor, the Court, on the application of the holder of such judgment, shall grant him a copy of the judgment and a certificate of any sum remaining due under it; and on the presentation of such copy and certificate to any Court of Civil Judicature having general jurisdiction in the place in which the immovable property of the judgment-debtor is situate, such Court shall proceed to enforce such judgment according to its own rules and mode of procedure in like cases.

21. In suits tried under this Act, all decisions and orders of the Court shall be final: Provided that in any case in which a decree shall be passed *ex parte* against a defendant he may, within thirty days after any process for enforcing the decree has been executed, give notice to the Court by which the decree was passed of his intention to apply to the Court at its next sitting for an order to set it aside; and if, on the application being made to the Court at its next sitting, it shall be proved to the satisfaction of the Court that the summons was not duly served, or that the defendant was prevented by any sufficient cause from appearing when the suit was heard, the

Ex-parte decree may be set aside.

Court shall pass an order setting aside the decree, and shall appoint a day for proceeding with the suit, upon such terms as to costs or otherwise as shall to the Court seem proper: Provided also that it shall be competent to the Court,

New trial.

if it shall think fit, in any case not falling within the proviso last aforesaid, to grant a new trial, if notice of the intention to apply for the same at the next sitting of the Court be given to the Court within the period of seven days from the date of the decision, and if the same be applied for at the next sitting of the Court; but no such new trial shall be granted where the party applying for the same is the defendant or one of the defendants, unless he shall, with his notice of applica-

On deposit of debt and costs. tion, deposit in Court the amount for which a decree shall have been passed against him, including the costs (if any) of the opposite party.

22—28. [Repealed by Act X of 1877.]

29. Whenever more Courts than one are constituted in any district under this Act, the Local Government may appoint one of the same Courts to be the Principal Court of Small Causes in such district.

30. The Judge of the Principal Court of Small Causes in any district may sit with the Judge of any other Court of Small Causes in the same district, or with a person invested with the powers of a Judge as aforesaid in such Court, for the trial and determination of any suit cognizable under this Act, and shall so sit for the trial and determination of any such suit which the Judge of such other Court or other person as aforesaid may reserve for trial by himself and the Judge of the Principal Court of Small Causes.

31. The Local Government may from time to time make rules providing that, in such cases as shall be prescribed in such rules, two Judges or a Judge and a person invested with the powers of a Judge as aforesaid shall sit together, and hear and dispose of suits and applications.

32. If two Judges, or a Judge and a person invested with the powers of a Judge as aforesaid, sit together, and they concur in the decision or order to be passed, such decision or order shall be the decision or order of the Court; but if they shall differ on a point of law, or usage having the force of law, or in construing a document, the construction of which may affect the merits of the decision, they shall submit a case for the opinion of the High Court on the point of difference between them * * *; and the provisions applicable to a reference to the High Court * * * shall be applicable to every reference made under this section.

Casting voice in case of difference between two Judges on a question of fact.

Casting voice in case of difference on a question of fact between a Judge and a person invested with a Judge's powers.

33. If two Judges differ on any matter other than the matters above mentioned, the Judge who is senior in respect of date of appointment as a Judge of a Court of Small Causes shall have the casting voice.

34. If a Judge and a person invested with the powers of a Judge as aforesaid differ on any matter other than the matters abovementioned, the Judge shall have the casting voice.

35. It shall be lawful for the Local Government to appoint to any Court of Small Causes an officer who shall be called the Registrar of the Court, and who shall be paid such salary as shall from time to time be authorized in that behalf by the Governor-General of India in Council.

36. The Registrar of every Court of Small Causes shall be the chief Ministerial Officer of the Court. In addition to any other duties and powers herein imposed or conferred upon the Registrar, he shall, subject to the provisions contained in the next following section, receive all plaints presented to the Court, issue notice of suit to the defendants, receive any documents which the parties may wish to put in, and issue process for the attendance of their witnesses. He shall likewise keep lists of all causes coming on for trial, and fix such days for their being heard respectively as may seem to him fit. He may also receive notices under the twenty-first section.

37. If, when the Judge is absent on duty, and there is no person invested with the powers of a Judge as aforesaid, the Registrar shall be of opinion that any plaint presented to the Court is defective in any of the particulars mentioned in the Code of Civil Procedure, he may reject the same. But it shall be lawful for the Judge, or for any person invested with the powers of a Judge as aforesaid, to reject any plaint which may have been received by the Registrar, and to receive any plaint which may have been rejected by him :

Provido. Provided that such reception or rejection (as the case may be) by the Registrar shall, in the opinion of such Judge or other person empowered as aforesaid, have been erroneous, and that an application to set the same aside shall be made at the first subsequent sitting in the said Court of a Judge or other person duly empowered as aforesaid.

38. If a suit shall have been instituted in a Court of Small Causes, and the defendant shall have been duly summoned to appear and answer therein, and if, before the day appointed for the hearing of such suit, the defendant or his agent duly authorized in that behalf shall appear before the Registrar of the Court, and admit the plaintiff's claim, and apply for leave to confess judgment, it shall be lawful for the Registrar, if the Judge be absent on duty, and there be no person invested with the powers of a Judge as aforesaid, to enter on the record a decree for the plaintiff by confession, and such decree shall have the like force and effect as a decree for the plaintiff would have had if the suit had been heard by the Judge and a decree passed by him for the plaintiff : Provided that in every case, before passing decree under this section, it shall be the duty of the Registrar fully to satisfy himself of the service of the summons, of the identity of the parties, and of their good faith in appearing before him.

39. The Registrar, if the Judge be absent on duty, and there be no person invested with the powers of a Judge as aforesaid, shall also receive applications for the execution of decrees passed by the Judge, or other person empowered as aforesaid, of the Court of which he is the Registrar, and, subject to any orders which he may receive from the Judge or such other person, shall execute such decrees in the same manner as the Judge might execute them. No appeal shall lie from any order passed by the Registrar under this section ; but the Judge or other person empowered as aforesaid may, within three calendar months from the making of the order, of his own motion reverse or modify it.

40. The Local Government may invest any Registrar with the power of

Power to invest Registrar with jurisdiction of Small Cause Court Judge in certain cases.

a Judge of a Court of Small Causes in suits arising within the local limits of the jurisdiction of the Court of which he is the Registrar, provided that the amount or value of the claim shall not exceed twenty rupees.

The Registrar shall exercise such powers subject to the general control of the Judge, or, when there is no Judge, of any person invested with the powers of a Judge as aforesaid.

41. The suits cognizable by the Registrar under the last preceding section

Hearing of suits cognizable by Registrar.

shall be set down for hearing before such Registrar, and he shall hear and determine such suits, and execute the decrees made therein, in such manner in all respects as the Judge of the Court might hear, determine, and execute the same respectively: Provided that the Judge, or, when there is no Judge, the person invested with the powers of a

Transfer from Registrar's to Judge's file.

Judge, whenever he thinks proper, may transfer to his own file any suit on the file of the Registrar, and may hear and determine the same.

42. [Repealed by Act X of 1877.]

43. A decree passed by a Registrar under the thirty-eighth section may

Setting aside decree by a Registrar under section 38. be set aside by the Judge of the Court, or, when there is no Judge, by the person invested with the powers of a Judge as aforesaid, in such manner and on such grounds only as it might be set aside if it were a decree passed at the hearing of the cause by the Judge or other person empowered as aforesaid.

44. An officer to be styled the Clerk of the Court may be appointed

Appointment and removal of Clerk of the Court.

to any Court of Small Causes on such salary as shall be authorized by the Governor-General of India in Council. The appointment and removal of such officer shall rest with the Court, subject to the approval of the Local Government, or, in territories under the immediate administration of the Government of India, of the Chief Commissioner or other Principal Civil Authority. The Registrar of any Court of Small Causes may also be the Clerk of the Court.

45. When a Clerk is appointed to any Court of Small Causes, such Clerk

Duties of Clerk. shall, subject to the orders of the Court and of the Registrar if there be a Registrar, issue all summonses, warrants, orders, and writs of execution, and keep an account of all proceedings of the Court, and shall take charge of and keep an account of all monies payable or paid into or out of Court, and shall enter an account of all such monies in a book belonging to the Court to be kept by such Clerk for that purpose.

46. The High Court shall have power to make and issue general rules

High Court empowered to make rules of practice, &c. for regulating the practice and proceedings of Courts of Small Causes, and also to prescribe forms for every proceeding in the said Courts for which it shall think that forms should be provided, and for keeping all books, entries, and accounts to be kept by the officers, and from time to time to alter any such rule or form; provided that such rules and forms be not inconsistent with the provisions of this Act or of any other law for the time being in force.

47. [Repealed by Act X of 1877.]

48. Nothing in the second section of the said Act No. III of 1859, or the

Saving of Act XI of 1841, section 17. sixth, seventh, and eighth sections of Act No. XXII of 1864 (to make provision for the Administration of Military Cantonments), relating to the establishment of Courts of Small

Causes, in Military Cantonments, shall be held to affect so much of Act No. XI of 1841 (for consolidating and amending the *Regulations concerning Military Courts of Requests for Native Officers and Soldiers in the service of the East India Company*) as declares that in places beyond the frontier of the territories of the East India Company actions of debt and other personal actions may be brought before the Military Courts therein mentioned for any amount of demand.

49. Nothing in this Act, nor in the sixth, seventh, and eighth sections of Saving of jurisdiction of the said Act XXII of 1864, shall be held to affect Courts of Requests. the jurisdiction of any Court of Requests convened under the hundred and third section of the Statute 27 Vic., cap. 3, or the corresponding section in any other Statute for the time being in force, for punishing mutiny and desertion, and for the better payment of the Army and their quarters, or the powers of a Commanding Officer under any such Statute to assemble such Courts.

50. When in any Act passed prior to the coming into operation of this Act reference is made to Act XLII of 1860, such Reference in previous Acts to Act XLII of 1860 to be read as applying to this Act. reference shall be read as applying to this Act; and when any procedure is directed to be in accordance with the provisions of Act XLII of 1860, such procedure shall be deemed to be directed to be in accordance with the provisions of this Act.*

51. Whenever the state of business in any Court of Small Causes, the Judge of which shall be the Judge of such Court only, is not sufficient to occupy his time fully, the Powers of a Principal Sadr Amin or a Magistrate. Local Government may invest him within such limits as it shall from time to time appoint, in addition to his powers as such Judge, with the powers of a Magistrate as defined in the Code of Criminal Procedure, or, in the Regulation Provinces, with the powers of a † Principal Sadr Amin, or, in the Non-Regulation Provinces, with the powers of an Officer exercising the like or nearly the like powers as those of a † Principal Sadr Amin.

52. In the places in which the provisions of Act X of 1859† (to amend the Law relating to the recovery of Rent in the Presidency of Fort William in Bengal) are in force, the Power to give a Small Cause Court Judge the jurisdiction to hear claims under Act X of 1859. Local Government may empower any Judge of a Court of Small Causes to hear and determine, under the rules contained in the said Act X of 1859,‡ applicable to trials before a Collector, and subject to the same regular and special appeal, the claims cognizable under such Act, arising within the local limits of the jurisdiction of such Court. Any Judge so empowered shall exercise all the powers of a Collector under the said Act X of 1859,* except the power of hearing appeals.

53. Courts of Small Causes shall comply with such requisitions as may from time to time be made by the Local Government or the High Court for records, returns, and statements in such form and manner as such Government or Court may deem proper.

* See Act X of 1863, sec. 1 (repealed by Act XIX of 1867), Act IV of 1864 (repealed by Act VIII of 1868), Act XXII of 1864, sec. 44; Bengal Act II of 1862, sec. 2 (repealed by Act XII of 1873); Madras Act IV of 1863 (repealed by Act III of 1873); Bombay Act VIII of 1863 (repealed by Act XII of 1873).

† See, in Bengal, Act VI of 1871, sec. 31; and, in Madras, Act III of 1873, sec. 29.

‡ In the North-Western Provinces, for "Act X of 1859," the words and figures, "the North-Western Provinces Rent Act, 1873," are substituted. See Act XVIII of 1873, sec. 2.

THE COURT FEES ACT,

No. VII of 1870.

[Received the Governor-General's assent on the 11th March 1870.]

CHAPTER I.

PRELIMINARY.

- Short title. **1.** This Act may be called "The Court Fees Act, 1870."
- Extent of Act. It extends to the whole of British India ;*
- Commencement of Act. And it shall come into force on the first day of April 1870.
- 2.** [Repealed by Act XLV of 1870.]

CHAPTER II.

FEES IN THE HIGH COURTS AND IN THE COURTS OF SMALL CAUSES AT THE PRESIDENCY TOWNS.

- 3.** The fees payable for the time being to the clerks and officers (other than the sheriffs and attorneys) of the High Courts established by Letters Patent, by virtue of the power conferred by statute twenty-fourth and twenty-fifth of Victoria, chapter one hundred and four, section fifteen, or chargeable in each of such Courts under No. eleven of the first, and Nos. seven, twelve, fourteen, sixteen, twenty, and twenty-one of the second, schedule to this Act annexed ;
- Levy of fees in High Courts on their original sides.
- Levy of fees in Presidency Small Cause Courts. and the fees for the time being chargeable in the Courts of Small Causes at the Presidency Towns and their several offices ;
- shall be collected in manner hereinafter appearing. †

* It has also been applied to the Province of Mysore (June 17, 1870), the Haidarabad Assigned Districts (May 20, 1870), the Cantonment of Secunderabad (September 21, 1870), and the Cantonments in Central India (May 5, 1870). On the other hand, it has been declared inapplicable to proceedings before officers making a settlement in the Santhal Parganas. (Santhal Parganas Settlement Regulation, 1872, s. 8.)

† See *Gazette of India*, July 19, 1873, p. 656, as to collecting such fees by adhesive stamps.

THE COURT FEES ACT.

4. No document of any of the kinds specified in the first or second schedule to this Act annexed, as chargeable with fees, shall be filed, exhibited, or recorded in, or shall be received or furnished by, any of the said High Courts in any case coming before such Court in the exercise of its extraordinary original civil jurisdiction; or in the exercise of its extraordinary original criminal jurisdiction; or in the exercise of its jurisdiction as regards appeals from the judgment of two or more Judges of the said Court, or of a Division Court; or in the exercise of its jurisdiction as regards appeals from the Courts subject to its superintendence; As Courts of reference and or in the exercise of its jurisdiction as a Court of reference or revision; unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.

5. When any difference arises between the officer whose duty it is to see that any fee is paid under this chapter and any suit-Procedure in case of difference as to necessity or or attorney as to the necessity of paying a fee or amount of fee. the amount thereof, the question shall, when the difference arises in any of the said High Courts, be referred to the taxing officer, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the Chief Justice of such High Court, or of such Judge of the High Court as the Chief Justice shall appoint either generally or specially in this behalf.

When any such difference arises in any of the said Courts of Small Causes, the question shall be referred to the Clerk of the Court, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the first Judge of such Court.

The Chief Justice shall declare who shall be taxing-officer within the meaning of the first paragraph of this section.

CHAPTER III.

FEES IN OTHER COURTS AND IN PUBLIC OFFICES.

6. Except in the Courts hereinbefore mentioned, no document of any of the kinds specified as chargeable in the first or second schedule to this Act annexed shall be filed, exhibited, or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.

Computation of fees payable in certain suits:

7. The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:—

- i. In suits for money (including suits for damages or compensation, or arrears of maintenance, of annuities, or of other sums payable periodically)—according to the amount claimed:

ii. In suits for maintenance and annuities or other sums payable periodically—according to the value of the subject-matter of the suit, and such value shall be deemed to be ten times the amount claimed to be payable for one year :

iii. In suits for moveable property other than money, where the subject-matter has a market-value—according to such value at the date of presenting the plaint :

iv. In suits

(a) for moveable property where the subject-matter has no market-value, as, for instance, in the case of documents relating to title,

to enforce a right to share in joint family property :

(b) to enforce the right to share in any property on the ground that it is joint family property,

for a declaratory decree and consequential relief :

(c) to obtain a declaratory decree or order where consequential relief is prayed,

for an injunction ;

(d) to obtain an injunction,

for easements :

(e) for a right to some benefit (not herein otherwise provided for) to arise out of land, and

for accounts :

(f) for accounts—

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal.

In all such suits the plaintiff shall state the amount at which he values the relief sought, and the provisions of the Code of Civil Procedure, section thirty-one, shall apply as if, for the word 'claim,' the words, 'relief sought,' were substituted.

v. In suits for the possession of land, houses, and gardens—according to the value of the subject-matter; and such value shall be deemed to be—

where the subject-matter is land, and—

(a) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government,

or forms part of such an estate, and is recorded in the Collector's register as separately assessed with such revenue, and such revenue is permanently settled—

ten times the revenue so payable ;

(b) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government; or forms part of such estate, and is recorded as aforesaid ;

and such revenue is settled, but not permanently—five times the revenue so payable :

(c) where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue,

and nett profits have arisen from the land during the year next before the date of presenting the plaint—

fifteen times such nett profits ;

but where no such nett profits have arisen therefrom—the amount at which the Court shall estimate the land with reference to the value of similar land in the neighbourhood :

(d) where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate, and is not separately assessed as above-mentioned—the market-value of the land:

Provided that, in the territories subject to the Governor of Bombay in Proviso as to Bombay Council, the value of the land shall be deemed to be—

(1) where the land is held on settlement for a period not exceeding thirty years, and pays the full assessment of Government—a sum equal to five times the survey-assessment;

(2) where the land is held on a permanent settlement, or on a settlement for any period exceeding thirty years, and pays the full assessment to Government—a sum equal to ten times the survey-assessment; and

(3) where the whole or any part of the annual survey-assessment is remitted—a sum computed under paragraph (1) or paragraph (2) of this proviso, as the case may be, in addition to ten times the assessment, or the portion of assessment, so remitted.

Explanation.—The word 'estate,' as used in this paragraph, means any land subject to the payment of revenue, for which the proprietor or a farmer or ryot shall have executed a separate engagement to Government, or which, in the absence of such engagement, shall have been separately assessed with revenue:

(e) where the subject-matter is a house or garden—according to the market-value of the house or garden:

vi. In suits to enforce a right of pre-emption—according to the value to enforce a right of pre-emption: (computed in accordance with paragraph v of this section) of the land, house, or garden in respect of which the right is claimed:

vii. In suits for the interest of an assignee of land-revenue—fifteen times for interest of assignee of his nett profits as such for the year next before the date of presenting the plaint:

viii. In suits to set aside an attachment of land or of an interest in land or revenue—according to the amount for which the land or interest was attached:

Provided that, where such amount exceeds the value of the land or interest, the amount of fee shall be computed as if the suit were for the possession of such land or interest:

ix. In suits against a mortgagee for the redemption of the property mortgaged, and in suits by a mortgagee to foreclose the mortgage,

or, where the mortgage is made by conditional sale, to have the sale declared absolute—

according to the principal money expressed to be secured by the instrument of mortgage:

x. In suits for specific performance—

(a) of a contract of sale—according to the amount of the consideration:

(b) of a contract of mortgage—according to the amount agreed to be secured:

(c) of a contract of lease—according to the aggregate amount of the fine or premium (if any) and of the rent agreed to be paid during the first year of the term:

(d) of an award—according to the amount or value of the property in dispute:

between landlord and tenant. xi. In the following suits between landlord and tenant:—

- (a) for the delivery by a tenant of the counterpart of a lease,
- (b) to enhance the rent of a tenant having a right of occupancy,
- (c) for the delivery by a landlord of a lease,
- (d) to contest a notice of ejectment,
- (e) to recover the occupancy of land from which a tenant has been illegally ejected by the landlord, and

(f) for abatement of rent—
according to the amount of the rent of the land to which the suit refers, payable for the year next before the date of presenting the plaint.

8. The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes shall be computed according to the difference between the amount awarded and the amount claimed by the appellant.

9. If the Court sees reason to think that the annual nett profits or the Power to ascertain nett market-value of any such land, house, or garden as profits or market-value. is mentioned in section seven, paragraphs five and six, have or has been wrongly estimated, the Court may, for the purpose of computing the fee payable in any suit therein mentioned, issue a commission to any proper person, directing him to make such local or other investigation as may be necessary, and to report thereon to the Court.

10. i. If in the result of any such investigation the Court finds that Procedure where nett profits or market-value wrongly estimated. the nett profits or market-value have or has been wrongly estimated, the Court, if the estimation has been excessive, may, in its discretion, refund the excess paid as such fee; but if the estimation has been insufficient, the Court shall require the plaintiff to pay so much additional fee as would have been payable had the said market-value or nett profits been rightly estimated.

ii. In such case the suit shall be stayed until the additional fee is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.

iii. Section one hundred and eighty of the Code of Civil Procedure shall be construed as if the words 'the market-value of any property or' were inserted after the word 'ascertaining,' and as if the words 'or annual nett profits' were inserted after the word 'damages.'

11. In suits for mesne-profits or for immoveable property and mesne-profits, or for an account, if the profits or amount decreed are or is in excess of the profits claimed or the amount at which the plaintiff valued the relief sought, the decree shall not be executed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits or amount so decreed shall have been paid to the proper officer.

Where the amount of mesne-profits is left to be ascertained in the course of the execution of the decree, if the profits so ascertained exceed the

profits claimed, the further execution of the decree shall be stayed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.

12. i. Every question relating to valuation for the purpose of determining the amount of any fee chargeable under this chapter on a plaint or memorandum of appeal shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit :

ii. But whenever any such suit comes before a Court of appeal, reference, or revision, if such Court considers that the said question has been wrongly decided to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided, and the provisions of section ten, paragraph ii, shall apply.

13. If an appeal or plaint, which has been rejected by the lower Court on any of the grounds mentioned in the Code of Civil Procedure, is ordered to be received, or if a suit is remanded in appeal on any of the grounds mentioned in section three hundred and fifty-one of the same Code for a second decision by the lower Court, the Appellate Court shall grant to the appellant a certificate, authorizing him to receive back from the Collector the full amount of fee paid on the memorandum of appeal :

Provided that, if, in the case of a remand in appeal, the order of remand shall not cover the whole of the subject-matter of the suit, the certificate so granted shall not authorize the appellant to receive back more than so much fee as would have been originally payable on the part or parts of such subject-matter in respect whereof the suit has been remanded.

14. Where an application for a review of judgment is presented on or after the ninetieth day from the date of the decree, the Court, unless the delay was caused by the applicant's laches, may, in its discretion, grant him a certificate authorizing him to receive back from the Collector so much of the fee paid on the application as exceeds the fee which would have been payable had it been presented before such day.

15. Where an application for a review of judgment is admitted, and where, on the rehearing, the Court reverses or modifies its former decision on the ground of mistake in law or fact, the applicant shall be entitled to a certificate from the Court authorizing him to receive back from the Collector so much of the fee paid on the application* as exceeds the fee payable on any other application to such Court under the second schedule to this Act, No. one, clause b or clause d.

But nothing in the former part of this section shall entitle the applicant to such certificate where the reversal or modification is due, wholly or in part, to fresh evidence which might have been produced at the original hearing.

* See Act XX of 1870.

16. When any appeal is presented, to a Civil Court, not against the whole of a decision, but only against so much thereof as relates to a portion of the subject-matter of the suit, and, on the hearing of such appeal, the respondent takes objection to any part of the said decision other than the part appealed against, the Court shall not hear such objection until the respondent shall have paid the additional fee which would have been payable had the appeal comprised the part of the decision so objected to.

17. Where a suit embraces two or more distinct subjects, the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees to which the plaintiffs or memoranda of appeal in suits embracing separately each of such subjects would be liable under this Act.

Nothing in the former part of this section shall be deemed to affect the power conferred by the Code of Civil Procedure, section nine.

18. When the first or only examination of a person who complains of the offence of wrongful confinement, or of wrongful restraint, or of any offence other than an offence for which police-officers may arrest without a warrant, and who has not already presented a petition on which a fee has been levied under this Act, is reduced to writing under the provisions of the Code of Criminal Procedure, the complainant shall pay a fee of eight annas, unless the Court thinks fit to remit such payment.

19. Nothing contained in this Act shall render the following documents chargeable with any fee:—

i. Power-of-attorney to institute or defend a suit when executed by an officer, warrant-officer, non-commissioned officer, or private of Her Majesty's army not in civil employment.

ii. Declarations mentioned in section one hundred and eighteen and section one hundred and sixty-four of the Code of Civil Procedure.

iii. Written statements called for by the Court after the first hearing of a suit.

iv. Plaint presented to a Military Court of Requests and petition for execution of a decree of such Court.

v. Plaints in suits tried by Village Munsifs in the Presidency of Fort St. George.

vi. Plaints and processes in suits before District Panchayats in the same Presidency.

vii. Plaints in suits before Collectors under Madras Regulation XII of 1816.

viii. Probate of a will, letters of administration, and certificate mentioned in the first schedule to this act annexed, No. twelve, where the amount or value of the property in respect of which the probate or letters or certificate shall be granted does not exceed one thousand rupees.

ix. Application or petition to a Collector or other officer making a settlement of land revenue, or to a Board of Revenue, or a Commissioner of Revenue, relating to matters connected with the assessment of land or the ascertainment of rights thereto or interests therein, if presented previous to the final confirmation of such settlement.

x. Application relating to a supply for irrigation of water belonging to Government.

xi. Application for leave to extend cultivation, or to relinquish land, when presented to an officer of land-revenue by a person holding, under direct engagement with Government, land of which the revenue is settled, but not permanently.

xii. Application for service of notice of relinquishment of land or of enhancement of rent.

xiii. Written authority to an agent to distrain.

xiv. First application (other than a petition containing a criminal charge or information) for the summons of a witness or other person to attend either to give evidence or to produce a document, or in respect of the production or filing of an exhibit not being an affidavit made for the immediate purpose of being produced in Court.

xv. Bail-bonds in criminal cases, recognizances to prosecute or give evidence, and recognizances for personal appearance or otherwise.

xvi. Petition, application, charge, or information respecting any offence, when presented, made, or laid to or before a police-officer, or to or before the heads of villages or the village police in the territories respectively subject to the Governors in Council of Madras and Bombay.

xvii. Petition by a prisoner or other person in duress or under restraint of any Court or its officers.

xviii. Complaint of a public servant (as defined in the Indian Penal Code), a municipal officer, or an officer or servant of a Railway Company.

xix. Application for permission to cut timber in Government forests, or otherwise relating to such forests.

xx. Application for the payment of money due by Government to the applicant.

xxi. Petition of appeal against the *chaukidari* assessment under Act No. XX of 1856, or against any municipal tax.

xxii. Applications for compensation under any law for the time being in force relating to the acquisition of property for public purposes.

xxiii. Petitions presented to the Special Commissioner appointed under Bengal Act No. II of 1869 (*to ascertain, regulate, and record certain tenures in Chutia Nagpur*).

xxiv. Petitions under the* Indian Christian Marriage Act, 1872, section forty-five and forty-eight.

CHAPTER IIIA.

PROBATES, LETTERS OF ADMINISTRATION, AND CERTIFICATES OF ADMINISTRATION.

19A. Where any person, on applying for the probate of a will or letters of administration, has estimated the property of the deceased to be of greater value than the same has afterwards proved to be and has consequently paid too high a court-fee thereon, if within six months after the true value of the property has been ascertained, such person produces the probate or letters to the Chief Controlling Revenue Authority of the Province in which the probate or letters has or have been granted, and delivers to such Authority a particular inventory and valuation of the property of the deceased, verified by affidavit or affirmation, and if such Authority is satisfied that a greater fee was paid on the probate or letters than the law required, the said Authority may—

* See Act XV of 1872, s. 2.

(a) cancel the stamp on the probate or letters, if such stamp has not been already cancelled,

(b) substitute another stamp for denoting the court-fee which should have been paid thereon, and

(c) make an allowance for the difference between them as in the case of spoiled stamp, or repay the same in money, at his discretion *

19B Whenever it is proved to the satisfaction of such Authority that an executor or administrator has paid debts due from a deceased person have from the deceased to such an amount as being deducted out of the amount or value of the estate, reduces the same to a sum which, if it had been the whole gross amount or value of the estate would have occasioned a less court fee to be paid on the probate or letters of administration granted in respect of such estate than has been actually paid thereon under this Act,

such Authority may return the difference, provided the same be claimed within three years after the date of such probate or letters.

But when, by reason of any legal proceeding, the debts due from the deceased have not been ascertained and paid or his effects have not been recovered and made available and in consequence thereof the executor or administrator is prevented from claiming the return of such difference within the said term of three years, the said Authority may allow such further time for making the claim as may appear to be reasonable under the circumstances †

19C Whenever such a grant of probate or letters of administration has been or is made in respect of the whole of the property belonging to an estate and the full fee chargeable under this Act has been or is paid thereon, no fee shall be chargeable under the same Act when a like grant is made in respect of the whole or any part of the same property belonging to the same estate.

Whenever such a grant has been or is made in respect of any property forming part of an estate, the amount of fees then actually paid under this Act shall be deducted when a like grant is made in respect of property belonging to the same estate, identical with or including the property to which the former grant relates.

19D The probate of the will or the letters of administration of the effects of any person deceased heretofore or hereafter granted shall be deemed valid and available by his executor or administrators for recovering, transferring, or assigning any movable or immovable property whereof or whereto the deceased was possessed or entitled either wholly or partially as a trustee, notwithstanding the amount or value of such property is not included in the amount or value of the estate in respect of which a court fee was paid on such probate or letters of administration ‡

19E Where any person, on applying for probate or letters of administration, has estimated the estate of the deceased to be of less value than the same has afterwards proved to be, and has, in consequence, paid too low a court fee thereon, the Chief Controlling Revenue Authority of the Province in which the probate or letters has or have been granted may, on the value of the estate of the deceased being verified by affidavit or affirmation, cause the

* From 55 Geo III c 184 s 40

† From 55 Geo III c 184 s 51

‡ From 4th Geo III c 149 s 35

probate or letters of administration to be duly stamped on payment of the full court-fee which ought to have been originally paid thereon in respect of such value and of the further penalty, if the probate or letters is or are produced within one year from the date of the grant, of five times, or, if it or they is or are produced after one year from such date, of twenty times, such proper court-fee, without any deduction of the court-fee originally paid on such probate or letters :

Provided that, if the application be made within six months after the ascertainment of the true value of the estate and the discovery that too low a court-fee was at first paid on the probate or letters, and if the said Authority is satisfied that such fee was paid in consequence of a mistake or of its not being known at the time that some particular part of the estate belonged to the deceased, and without any intention or fraud, or to delay the payment of the proper court-fee, the said Authority may remit the said penalty, and cause the probate or letters to be duly stamped on payment only of the sum wanting to make up the fee which should have been at first paid thereon.*

19F. In case of letters of administration on which too low a court-fee has

Administrator to give proper security before letters stamped under section 19E. been paid at first, the said Authority shall not cause the same to be duly stamped in manner aforesaid until the administrator has given such security to the Court by which the letters of administration have been granted as ought by law to have been given on the granting thereof in case the full value of the estate of the deceased had been then ascertained.†

19G. Where too low a court-fee has been paid on any probate

Executors, &c., not paying full court-fee on probates, &c., within six months after discovery of under-payment. or letters of administration in consequence of any mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, if any executor or administrator acting under such probate or letters does not, within six months after the first of April 1875, or after the discovery of the mistake or of any effects not known at the time to have belonged to the deceased, apply to the said Authority, and pay what is wanting to make up the court-fee which ought to have been paid at first on such probate or letters, he shall forfeit the sum of one thousand rupees, and also a further sum at the rate of ten rupees per cent. on the amount of the sum wanting to make up the proper court-fee.‡

19H. The provisions of sections 19A to 19G (both inclusive) shall,

Sections 19A to 19G applied to certificates under Acts XL of 1858 and XX of 1864: *mutatis mutandis*, apply to certificates granted under Act No. XL of 1858 (for making better provision for the care of the persons and property of Minors in the Presidency of Fort William in Bengal) or Act XX of 1864 (for making better provision for the care of the persons and property of Minors in the Presidency of Bombay) and to the holders of such certificates.

CHAPTER IV.

PROCESS FEES.

Rules as to costs of process.

20. The High Court shall, as soon as may be, make rules as to the following matters :

* From 55 Geo. iii., c. 184, s. 41.

† From 55 Geo. iii., c. 184, s. 42.

‡ From 55 Geo. iii., c. 184, s. 43.

i. the fees chargeable for serving and executing processes issued by such Court in its appellate jurisdiction, and by the other Civil and Revenue Courts established within the local limits of such jurisdiction :

ii. the fees chargeable for serving and executing processes issued by the Criminal Courts established within such limits in the case of offences other than offences for which police-officers may arrest without a warrant; and

iii. the remuneration of the peons and all other persons employed by leave of a Court in the service or execution of processes.

The High Court may, from time to time, alter and add to the rules so made.

All such rules, alterations, and additions, shall, after being confirmed by Confirmation and publication of the Local Government, and sanctioned by the Governor-General of India in Council, be published in the local official Gazette, and shall thereupon have the force of law.*

Until such rules shall be so made and published, the fees now leviable for serving and executing processes shall continue to be levied, and shall be deemed to be fees leviable under this Act.

21. A Table in the English and Vernacular languages, showing the fee Tables of process fees chargeable for such service and execution, shall be exposed to view in a conspicuous part of each Court.

22. Subject to rules to be made by the High Court,† and approved by the Local Government and the Governor-General of India in Council, every District Judge and every Magistrate of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court and each of the Courts subordinate thereto,

and for the purposes of this section, every Court of Small Causes established under Act No. XI of 1865 (to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature) shall be deemed to be subordinate to the Court of the District Judge.

23. Subject to rules to be framed by the Chief Controlling Revenue Authority,‡ and approved by the Local Government and the Governor-General of India in Council, every officer performing the functions of a Collector of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court or the Courts subordinate to him.

* See *Calcutta Gazette*, Feb 25, 1874, p 476 ; June 10, 1874, p 979. *Port St. George Gazette*, Aug. 5, 1873, p 1255, and June 30, 1874, p. 1005. *Bombay Government Gazette*, June 25, 1874, p 530, and July 8, 1875, p. 687. *Panjab Government Gazette*, June 5, 1873, p. 309. *Central Provinces Gazette*, Feb. 22, 1873, part i., 33. *British Burma Gazette*, Sep. 27, 1873, part ii., p. 183.

† See *Port St. George Gazette*, Aug. 5, 1873, p. 1257

‡ See *Calcutta Gazette*, Jan 22, 1873, p 146. *Port St. George Gazette*, Aug. 5, 1873, p. 1857. *Panjab Gazette*, May 29, 1873, p 296.

24. Every process served or executed under this chapter shall be held to be a process within the meaning of section one hundred and eighty-eight of the Code of Civil Procedure, and of section two of Act No. XXXIII of 1861 (to amend Act VIII of 1859).

Process served under this chapter to be held process served under Civil Procedure Code.

CHAPTER V.

OF THE MODE OF LEVYING FEES.

25. All fees referred to in section three, or chargeable under this Act, shall be collected by stamps.

Collection of fees by stamps.

26. The stamps used to denote any fee chargeable under this Act shall be impressed or adhesive, or partly impressed and partly adhesive, as the Governor-General of India in Council may, by notification in the *Gazette of India*, from time to time direct.

Stamps to be impressed or adhesive.

27. The Local Government may, from time to time, make rules for regulating—

Rules for supply, number, renewal and keeping accounts of stamps.

(a) the supply of stamps to be used under this Act,
(b) the number of stamps to be used for denoting any fee chargeable under this Act,

(c) the renewal of damaged or spoiled stamps, and
(d) the keeping accounts of all stamps used under this Act :

Provided that, in the case of stamps used under section three in a High Court, such rules shall be made with the concurrence of the Chief Justice of such Court.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.*

28. No document which ought to bear a stamp under this Act shall be of any validity, unless and until it is properly stamped.

Stamping documents inadvertently received.

But if any such document is, through mistake or inadvertency, received, filed, or used in any Court or office without being properly stamped, the presiding Judge or the head of the office, as the case may be, or, in the case of a High Court, any Judge of such Court, may, if he thinks fit, order that such document be stamped as he may direct; and on such document being stamped accordingly, the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance.

29. Where any such document is amended in order merely to correct a mistake, and to make it conform to the original intention of the parties, it shall not be necessary to impose a fresh stamp.

Amended document.

30. No document requiring a stamp under this Act shall be filed or acted upon in any proceeding in any Court or office until the stamp has been cancelled.

Cancellation of stamp.

*See *Calcutta Gazette*, April 2, 1873, p. 431; *Bombay Government Gazette*, Dec. 11, 1873, p. 1010; *N. W. P. Government Gazette*, Dec. 21 1872, p. 1374; *Panjab Government Gazette*, June 11, 1874, p. 183; *Central Provinces Gazette*, August 3, 1872, part ia.; p. 11; *British Burma Gazette*, May 24, 1873, part ii., p. 112.

Such officer as the Court or the head of the office may from time to time appoint shall, on receiving any such document, forthwith effect such cancellation by punching out the figure-head so as to leave the amount designated on the stamp untouched, and the part removed by punching shall be burnt or otherwise destroyed.

CHAPTER VI.

MISCELLANEOUS.

31. i. Whenever an application or petition containing a complaint or charge of an offence, other than an offence for which police-officers may arrest without warrant, is presented to a Criminal Court, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay to the complainant the fee paid on such application or petition.

ii. In the case mentioned in section eighteen, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay to the complainant the fee, if any, paid by the latter for the examination.

iii. When the complainant has paid fees for serving processes in either of the cases mentioned in the first and second paragraphs of this section, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay such fees to the complainant.

iv. All fees ordered to be repaid under this section may be recovered as if they were fines imposed by the Court.

32. The Code of Civil Procedure, sections three hundred and eight and three hundred and nine, shall be read as if, for Amendments of Act VIII of 1859, sections 308, 309, the words 'stamp-duty' and 'stamps,' the words 371, 373. and figures 'fees chargeable under the Court Fees' Act, 1870,' were substituted; section three hundred and seventy-one of the same Code shall be read as if, for the words 'a stamp of the value,' the words 'the payment of the fee,' were substituted; and section three hundred and seventy-three of the same Code shall be read as if, for the words 'on a stamp paper of the value,' the words 'and shall be chargeable with the fee,' were substituted; and as if for the words 'for the stamps,' the words 'the fees,' were substituted.*

33. Whenever the filing or exhibition in a Criminal Court of a document in respect of which the proper fee has not been paid is, in the opinion of the presiding Judge, necessary to prevent failure of justice, nothing contained in section four or section six shall be deemed to prohibit such filing or exhibition.

34. In the General Stamp Act, 1869, section forty-eight shall be read as if for the words and figures 'Act No. XXVI of 1867 (to amend the law relating to stamp-duties),' Rules for sale of stamps. the words and figures 'The Court Fees' Act, 1870,' were substituted.

35. The Governor-General of India in Council may from time to time, by notification in the *Gazette of India*, reduce or Power to reduce or remit fees. remit, in the whole or in any part of British India

all or any of the fees mentioned in the first and second schedules to this Act annexed,† and may in like manner cancel or vary such order.

36. Nothing in Chapters II and V of this Act applies to the commission payable to the Accountant-General of the High Court at Fort William, or to the fees which any officer of a High Court is allowed to receive in addition to a fixed salary.

† In exercise of this power fees on the following documents have been remitted :—

Copies of all documents furnished under the orders of any court or magistrate to any Government advocate or pleader or other person specially empowered in that behalf for the purpose of conducting any trial or investigation on the part of Government before any criminal court, and copies of all documents which any such advocate, pleader, or other person, is required to take in connection with any such trial or investigation for the use of any court or magistrate—No. 4366, dated Oct. 21, 1870.

Bonds and other instruments executed by salaried officers of Government to secure the due performance of their duties, and given by the direction of any court or executive authority. [See Court Fees Act, sch. ii., No. 6.]—No. 47, dated Jan. 6, 1871.

Plaints, petitions for execution, and memoranda of appeal, filed in claims under Madras Reg. VI of 1831, except plaints or petitions for execution, which are chargeable with a fee of 8 annas each, and memoranda of appeal, which are chargeable with a fee of 2 rupees each—No. 839, dated Jan. 31, 1872.

Copies of final sentences or orders passed by criminal courts, which parties desirous of appealing from such sentences or orders are required by s. 416 of the Code of Criminal Procedure to file with their petition of appeal, provided that the party desirous of appealing is in confinement under the operation of the sentence or order at the time that he applies for a copy of the same. This exemption also extends, under the same circumstances, to copies of the judgment or reasons for passing or making such sentence or order as above—No. 2520, dated April 5, 1872.

Copies of settlement-records furnished to landholders and cultivators, but not certified by the signature of any public officer to be true copies. (This does not apply to copies of judicial proceedings.)—No. 1906, dated Aug. 6, 1872.

Petitions of appeal presented to revenue-officers in accordance with s. 55 of Madras Act IV of 1871—No. 302, dated Jan. 17, 1873.

In every case in which the fee payable on the institution of a suit to enhance the rent of a tenant having a right of occupancy would, under the said Act, exceed the sum of 8 annas, such fee shall be reduced to the sum of 8 annas, whether such suit be brought against the tenant separately under Act X of 1859, or against several tenants collectively under s. 11 of Act XIV of 1863, provided that such suit is brought on or before the 1st day of May of the year following the agricultural year in which the revised assessments take effect in respect of the land on which the enhancement is sought. This notification applies only to the districts of the North-Western Provinces, in which settlement-operations are now in progress, or have lately been concluded, or may hereafter be set on foot—Department of Agriculture, Revenue, and Commerce, No. 451, dated June 5, 1873, p. 520.

1. Copy or translation of the charge furnished to an accused person under s. 199 of the Code of Criminal Procedure. 2. Copies of depositions furnished to accused persons under s. 201 of the said code. 3. Copy of the judgment or order passed by a criminal court, and of a judge's charge to the jury, furnished under s. 276 of the said code to any person affected by such judgment or order, provided that such person is in jail, or the court, for some special reason, sees fit to grant such copy free of expense. 4. Copies of the examination of witnesses given to accused persons under s. 357 of the said code. 5. Copies of charges given to accused persons under s. 446 of the said code. 6. Copies of orders of maintenance given under s. 538 of the said code—Home Department, Judicial, No. 996, dated June 6, 1873.

Applications presented to a collector for refund of the amount paid to Government for stamped paper, which has become spoiled or unfit for use, or is no longer required for use, and on application for renewal of stamp-paper which has been spoiled or unfit for use—No. 3316, dated Dec. 19, 1873.

The fee payable (a) on the plaint in every suit instituted in the Province of Oudh after Jan. 30, 1874, to obtain a declaratory decree in respect of an under-proprietory tenure where no consequential relief is prayed, and (b) on every appeal presented after that date in any such suit, whether instituted before or after the same date, has been reduced to 8 annas—No. 801, dated Jan. 30, 1874.

The proper fee to be paid upon the deposit in any court in the territories under the government of the Lieutenant-Governor of Bengal of rent not exceeding the sum of 15 rupees shall be as follows :—

| | <i>Proper Fee.</i> |
|--|--------------------|
| If the amount deposited does not exceed Rs. 2-8 ... | One anna. |
| If the amount deposited exceeds Rs. 2-8, but does not exceed Rs. 5 ... | Two annas. |
| If the amount deposited exceeds Rs. 5, but does not exceed „ 10 ... | Four annas. |
| If the amount exceeds Rs. 10. but does not exceed „ 15 .. | Six annas. |

No. 1070, dated Feb. 12, 1874.

Applications in writing, relating exclusively to the purchase of salt the property of Government—No. 1293, dated Feb. 20, 1874.

Plaints in summary suits brought before collectors under Madras Act VIII of 1865—No. 511, dated March 6, 1874.

Throughout the territories subject to the Governor of Fort Saint George in Council, the fees payable in suits by Government rayats for the recovery of land sold for arrears of revenue shall be reduced to the amount which would be payable if the value of the subject-matter were only the rent of the land payable for the year next before the date of presenting the plaint—No. 4685, dated July 31, 1874.

Copy of the judgment or order given by a criminal court under s. 464, Code of Criminal Procedure, to the accused person affected by such judgment or order, provided that such person is in jail, or that the court, for some special reason, sees fit to give such copy free of cost—No. 7317, dated Dec. 18, 1874.

SCHEDULE I.

Ad valorem fees.

| NUMBER. | | PROPER FEE. |
|---|--|---------------|
| 1. <i>Plaint or memorandum of appeal (not otherwise provided for in this Act), presented to any Civil or Revenue Court, except those mentioned in section three.*</i> | When the amount or value of the subject-matter in dispute does not exceed five rupees ... | Six annas. |
| | When such amount or value exceeds five rupees, For every five rupees, or part thereof, in excess of five rupees, up to one hundred rupees ... | Six annas. |
| | When such amount or value exceeds one hundred rupees, For every ten rupees, or part thereof, in excess of one hundred rupees, up to one thousand rupees ... | Twelve annas. |
| | When such amount or value exceeds one thousand rupees, For every one hundred rupees, or part thereof, in excess of one thousand rupees, up to five thousand rupees ... | Five rupees. |

* To ascertain the proper fee leviable on the institution of a suit, see the table annexed to this schedule.

SCHEDULE I—continued.

Ad valorem fees.

| NUMBER. | | PROPER FEE. |
|---|---|---|
| 1. <i>Plaint, &c.— (continued).</i> | When such amount or value exceeds five thousand rupees, For every two hundred and fifty rupees, or part thereof, in excess of five thousand rupees, up to ten thousand rupees ... | Ten rupees. |
| | When such amount or value exceeds ten thousand rupees, For every five hundred rupees, or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees... | Fifteen rupees. |
| | When such amount or value exceeds twenty thousand rupees, For every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to thirty thousand rupees ... | Twenty rupees. |
| | When such amount or value exceeds thirty thousand rupees, For every two thousand rupees, or part thereof, in excess of thirty thousand rupees, up to fifty thousand rupees ... | Twenty rupees. |
| | When such amount or value exceeds fifty thousand rupees, For every five thousand rupees, or part thereof, in excess of fifty thousand rupees ... | Twenty-five rupees. |
| 2. <i>Plaint* in a suit for possession under Act No. XIV of 1859 (to provide for the limitation of suits), section fifteen.</i> | Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be three thousand rupees. | A fee of one-half the amount prescribed in the foregoing scale. |
| 3. <i>[Repealed by Act VIII of 1871.]</i> | | |

* See Act XX of 1870.

SCHEDULE I.—continued.

Ad valorem fees.

| NUMBER. | | PROPER FEE. |
|--|--|---|
| 4. Application for review of judgment, if presented on or after the ninetieth day from the date of the decree. | { } | { The fee leviable on the plaint or memorandum of appeal. |
| 5. Application for review of judgment, if presented before the ninetieth day from the date of the decree. | { } | { One-half of the fee leviable on the plaint or memorandum of appeal. |
| | { When such judgment or order is passed by any Civil Court other than a High Court, or by the presiding officer of any Revenue Court or Office, or by any other Judicial or Executive Authority— | |
| | (a.)—If the amount or value of the subject-matter is fifty or less than fifty rupees ... | Four annas. |
| | (b.)—If such amount or value exceeds fifty rupees ... | Eight annas. |
| | When such judgment or order is passed by a High Court ... | One rupee. |
| | When such decree or order is made by any Civil Court other than a High Court, or by any Revenue Court— | |
| | (a.)—If the amount or value of the subject-matter of the suit wherein such decree or order is made is fifty or less than fifty rupees. ... | Eight annas. |
| | (b.)—If such amount or value exceeds fifty rupees ... | One rupee. |
| 7. Copy of a decree or order having the force of a decree. | { When such decree or order is made by a High Court ... } | { Four rupees. |

SCHEDULE I—continued.

Ad valorem fees.

| NUMBER. | | PROPER FEE. |
|--|--|--|
| 8. Copy of any document liable to stamp-duty under the General Stamp Act, 1869, when left by any party to a suit or proceeding in place of the original withdrawn. | (a.)—When the stamp-duty chargeable on the original does not exceed eight annas. | The amount of the duty chargeable on the original. |
| • | (b.)—In any other case ... | Eight annas. |
| 9. Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act, or copy of any account, statement, report, or the like, taken out of any Civil or Criminal or Revenue Court or office, or from the office of any chief officer charged with the executive administration of a Division. | For every three hundred and sixty words or fraction of three hundred and sixty words ... | Eight annas. |
| 10. Certificate of administration granted under Act No. XL of 1858 (<i>for making better provision for the care of the persons and property of minors in the Presidency of Fort William in Bengal</i>), or under Act No. XX of 1864 (<i>for making better provision for the care of the persons and property of minors in the Presidency of Bombay</i>). | If the amount or value of the property in respect to which such certificate is granted does not exceed five hundred rupees ... | Five rupees. |
| | If such amount or value exceeds five hundred rupees, but not one thousand rupees ... | Ten rupees. |
| | And for every one thousand rupees or part thereof, in excess of one thousand rupees ... | Five rupees. |

SCHEDULE I.

SCHEDULE I—continued.

Ad valorem fees.

| NUMBER. | | PROPER FEE. |
|---|---|--|
| <p>11. Probate of a will or letters of administration with or without will annexed.</p> <p>12. Certificate granted under Act No. XXVII of 1860 (<i>for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons</i>), or under Bombay Regulation VIII of 1827 (<i>to provide for the formal recognition of Heirs, Executors, and Administrators, and for the appointment of Administrators and Managers of Property by the Courts</i>).</p> | <p>If the amount or value of the property* in respect of which the probate or letters or certificate shall be granted exceeds one thousand rupees</p> <p>NOTE.—The person to whom any such certificate is granted, or his representative, shall, after the expiration of twelve months from the date of such certificate and thereafter whenever the Court granting such certificate requires him so to do, file a statement on oath of all monies recovered or realised by him under such certificate.</p> <p>If the monies so recovered or realised exceed the amount of debts or other property as sworn to by the person to whom the certificate is granted, the Court may cancel the same, and order such person to take out a fresh certificate, and pay the fee prescribed by this schedule for such excess.</p> <p>In default of filing such statement within the time allowed, the Court may cancel the certificate.†</p> | <p>Two per centum on such amount or value.</p> |

* *I. e.*, property of or to which the deceased was possessed or entitled. *In the goods of George*, 6 Beng. ap. 138.

† That the certificate liable to cancellation remains in force until cancelled, see 6 Mad. 135.

Table of rates of ad valorem fees, leviable on the institution of suits.

When the amount or value of
the subject-matter
exceeds | But does not exceed | Proper Fee.

| Rs. | Rs. | Rs. A. P. |
|-------|-----|-----------|
| | 5 | 0 6 0 |
| 5 | 10 | 0 12 0 |
| 10 | 15 | 1 2 0 |
| 15 | 20 | 1 8 0 |
| 20 | 25 | 1 14 0 |
| 25 | 30 | 2 4 0 |
| 30 | 35 | 2 10 0 |
| 35 | 40 | 3 0 0 |
| 40 | 45 | 3 6 0 |
| 45 | 50 | 3 12 0 |
| 50 | 55 | 4 2 0 |
| 55 | 60 | 4 8 0 |
| 60 | 65 | 4 14 0 |
| 65 | 70 | 5 4 0 |
| 70 | 75 | 5 10 0 |
| 75 | 80 | 6 0 0 |
| 80 | 85 | 6 6 0 |
| 85 | 90 | 6 12 0 |
| 90 | 95 | 7 2 0 |
| 95 | 100 | 7 8 0 |
| 100 | 110 | 8 4 0 |
| 110 | 120 | 9 0 0 |
| 120 | 130 | 9 12 0 |
| 130 | 140 | 10 8 0 |
| 140 | 150 | 11 4 0 |
| 150 | 160 | 12 0 0 |
| 160 | 170 | 12 12 0 |
| 170 | 180 | 13 8 0 |
| 180 | 190 | 14 4 0 |
| 190 | 200 | 15 0 0 |
| 200 | 210 | 15 12 0 |
| 210 | 220 | 16 8 0 |
| 220 | 230 | 17 4 0 |
| 230 | 240 | 18 0 0 |
| 240 | 250 | 18 12 0 |
| 250 | 260 | 19 8 0 |
| 260 | 270 | 20 4 0 |
| 270 | 280 | 21 0 0 |
| 280 | 290 | 21 12 0 |

Table of rates of ad valorem fees, &c.—continued. .

| When the amount or value of the subject-matter exceeds | But does not exceed | Proper Fee. |
|--|---------------------|-------------|
| Rs. | Rs. | Rs. A. P. |
| 290 | 300 | 22 8 0 |
| 300 | 310 | 23 4 0 |
| 310 | 320 | 24 0 0 |
| 320 | 330 | 24 12 0 |
| 330 | 340 | 25 8 0 |
| 340 | 350 | 26 4 0 |
| 350 | 360 | 27 0 0 |
| 360 | 370 | 27 12 0 |
| 370 | 380 | 28 8 0 |
| 380 | 390 | 29 4 0 |
| 390 | 400 | 30 0 0 |
| 400 | 410 | 30 12 0 |
| 410 | 420 | 31 8 0 |
| 420 | 430 | 32 4 0 |
| 430 | 440 | 33 0 0 |
| 440 | 450 | 33 12 0 |
| 450 | 460 | 34 8 0 |
| 460 | 470 | 35 4 0 |
| 470 | 480 | 36 0 0 |
| 480 | 490 | 36 12 0 |
| 490 | 500 | 37 8 0 |
| 500 | 510 | 38 4 0 |
| 510 | 520 | 39 0 0 |
| 520 | 530 | 39 12 0 |
| 530 | 540 | 40 8 0 |
| 540 | 550 | 41 4 0 |
| 550 | 560 | 42 0 0 |
| 560 | 570 | 42 12 0 |
| 570 | 580 | 43 8 0 |
| 580 | 590 | 44 4 0 |
| 590 | 600 | 45 0 0 |
| 600 | 610 | 45 12 0 |
| 610 | 620 | 46 8 0 |
| 620 | 630 | 47 4 0 |
| 630 | 640 | 48 0 0 |
| 640 | 650 | 48 12 0 |
| 650 | 660 | 49 8 0 |
| 660 | 670 | 50 4 0 |
| 670 | 680 | 51 0 0 |

Table of rates of ad valorem fees, &c.—continued.

| When the amount or value of the subject-matter exceeds | But does not exceed | Proper Fee. | | |
|--|---------------------|-------------|----|----|
| Rs. | Rs. | Rs. | A. | P. |
| 680 | 690 | - 51 | 12 | 0 |
| 690 | 700 | - 52 | 8 | 0 |
| 700 | 710 | - 53 | 4 | 0 |
| 710 | 720 | - 54 | 0 | 0 |
| 720 | 730 | - 54 | 12 | 0 |
| 730 | 740 | - 55 | 8 | 0 |
| 740 | 750 | - 56 | 4 | 0 |
| 750 | 760 | - 57 | 0 | 0 |
| 760 | 770 | - 57 | 12 | 0 |
| 770 | 780 | - 58 | 8 | 0 |
| 780 | 790 | - 59 | 4 | 0 |
| 790 | 800 | - 60 | 0 | 0 |
| 800 | 810 | - 60 | 12 | 0 |
| 810 | 820 | - 61 | 8 | 0 |
| 820 | 830 | - 62 | 4 | 0 |
| 830 | 840 | - 63 | 0 | 0 |
| 840 | 850 | - 63 | 12 | 0 |
| 850 | 860 | - 64 | 8 | 0 |
| 860 | 870 | - 65 | 4 | 0 |
| 870 | 880 | - 66 | 0 | 0 |
| 880 | 890 | - 66 | 12 | 0 |
| 890 | 900 | - 67 | 8 | 0 |
| 900 | 910 | - 68 | 4 | 0 |
| 910 | 920 | - 69 | 0 | 0 |
| 920 | 930 | - 69 | 12 | 0 |
| 930 | 940 | - 70 | 8 | 0 |
| 940 | 950 | - 71 | 4 | 0 |
| 950 | 960 | - 72 | 0 | 0 |
| 960 | 970 | - 72 | 12 | 0 |
| 970 | 980 | - 73 | 8 | 0 |
| 980 | 990 | - 74 | 4 | 0 |
| 990 | 1,000 | - 75 | 0 | 0 |
| 1,000 | 1,100 | - 80 | 0 | 0 |
| 1,100 | 1,200 | - 85 | 0 | 0 |
| 1,200 | 1,300 | - 90 | 0 | 0 |
| 1,300 | 1,400 | - 95 | 0 | 0 |
| 1,400 | 1,500 | - 100 | 0 | 0 |
| 1,500 | 1,600 | - 105 | 0 | 0 |
| 1,600 | 1,700 | - 110 | 0 | 0 |

Table of rates of ad valorem fees, &c.—continued.

| When the amount or value of the subject-matter exceeds | But does not exceed | Proper Fee. |
|--|---------------------|-------------|
| Rs. | Rs. | Rs. A. P. |
| 1,700 | 1,800 | 115 0 0 |
| 1,800 | 1,900 | 120 0 0 |
| 1,900 | 2,000 | 125 0 0 |
| 2,000 | 2,100 | 130 0 0 |
| 2,100 | 2,200 | 135 0 0 |
| 2,200 | 2,300 | 140 0 0 |
| 2,300 | 2,400 | 145 0 0 |
| 2,400 | 2,500 | 150 0 0 |
| 2,500 | 2,600 | 155 0 0 |
| 2,600 | 2,700 | 160 0 0 |
| 2,700 | 2,800 | 165 0 0 |
| 2,800 | 2,900 | 170 0 0 |
| 2,900 | 3,000 | 175 0 0 |
| 3,000 | 3,100 | 180 0 0 |
| 3,100 | 3,200 | 185 0 0 |
| 3,200 | 3,300 | 190 0 0 |
| 3,300 | 3,400 | 195 0 0 |
| 3,400 | 3,500 | 200 0 0 |
| 3,500 | 3,600 | 205 0 0 |
| 3,600 | 3,700 | 210 0 0 |
| 3,700 | 3,800 | 215 0 0 |
| 3,800 | 3,900 | 220 0 0 |
| 3,900 | 4,000 | 225 0 0 |
| 4,000 | 4,100 | 230 0 0 |
| 4,100 | 4,200 | 235 0 0 |
| 4,200 | 4,300 | 240 0 0 |
| 4,300 | 4,400 | 245 0 0 |
| 4,400 | 4,500 | 250 0 0 |
| 4,500 | 4,600 | 255 0 0 |
| 4,600 | 4,700 | 260 0 0 |
| 4,700 | 4,800 | 265 0 0 |
| 4,800 | 4,900 | 270 0 0 |
| 4,900 | 5,000 | 275 0 0 |
| 5,000 | 5,250 | 285 0 0 |
| 5,250 | 5,500 | 295 0 0 |
| 5,500 | 5,750 | 305 0 0 |
| 5,750 | 6,000 | 315 0 0 |
| 6,000 | 6,250 | 325 0 0 |
| 6,250 | 6,500 | 335 0 0 |

Table of rates of ad valorem fees, &c.—continued.

| When the amount or value of the subject-matter exceeds | But does not exceed | Proper Fee. | | |
|--|---------------------|-------------|----|----|
| Rs. | Rs. | Rs. | A. | P. |
| 6,500 | 6,750 | 345 | 0 | 0 |
| 6,750 | 7,000 | 355 | 0 | 0 |
| 7,000 | 7,250 | 365 | 0 | 0 |
| 7,250 | 7,500 | 375 | 0 | 0 |
| 7,500 | 7,750 | 385 | 0 | 0 |
| 7,750 | 8,000 | 395 | 0 | 0 |
| 8,000 | 8,250 | 405 | 0 | 0 |
| 8,250 | 8,500 | 415 | 0 | 0 |
| 8,500 | 8,750 | 425 | 0 | 0 |
| 8,750 | 9,000 | 435 | 0 | 0 |
| 9,000 | 9,250 | 445 | 0 | 0 |
| 9,250 | 9,500 | 455 | 0 | 0 |
| 9,500 | 9,750 | 465 | 0 | 0 |
| 9,750 | 10,000 | 475 | 0 | 0 |
| 10,000 | 10,500 | 490 | 0 | 0 |
| 10,500 | 11,000 | 505 | 0 | 0 |
| 11,000 | 11,500 | 520 | 0 | 0 |
| 11,500 | 12,000 | 535 | 0 | 0 |
| 12,000 | 12,500 | 550 | 0 | 0 |
| 12,500 | 13,000 | 565 | 0 | 0 |
| 13,000 | 13,500 | 580 | 0 | 0 |
| 13,500 | 14,000 | 595 | 0 | 0 |
| 14,000 | 14,500 | 610 | 0 | 0 |
| 14,500 | 15,000 | 625 | 0 | 0 |
| 15,000 | 15,500 | 640 | 0 | 0 |
| 15,500 | 16,000 | 655 | 0 | 0 |
| 16,000 | 16,500 | 670 | 0 | 0 |
| 16,500 | 17,000 | 685 | 0 | 0 |
| 17,000 | 17,500 | 700 | 0 | 0 |
| 17,500 | 18,000 | 715 | 0 | 0 |
| 18,000 | 18,500 | 730 | 0 | 0 |
| 18,500 | 19,000 | 745 | 0 | 0 |
| 19,000 | 19,500 | 760 | 0 | 0 |
| 19,500 | 20,000 | 775 | 0 | 0 |
| 20,000 | 21,000 | 795 | 0 | 0 |
| 21,000 | 22,000 | 815 | 0 | 0 |
| 22,000 | 23,000 | 835 | 0 | 0 |
| 23,000 | 24,000 | 855 | 0 | 0 |
| 24,000 | 25,000 | 875 | 0 | 0 |

Table of rates of ad valorem fees, &c.—continued.

| When the amount or value of the subject-matter exceeds | But does not exceed | Proper Fee. | | |
|--|---------------------|-------------|----|----|
| Rs. | Rs. | Rs. | A. | P. |
| 25,000 | 26,000 | 895 | 0 | 0 |
| 26,000 | 27,000 | 915 | 0 | 0 |
| 27,000 | 28,000 | 935 | 0 | 0 |
| 28,000 | 29,000 | 955 | 0 | 0 |
| 29,000 | 30,000 | 975 | 0 | 0 |
| 30,000 | 32,000 | 995 | 0 | 0 |
| 32,000 | 34,000 | 1,015 | 0 | 0 |
| 34,000 | 36,000 | 1,035 | 0 | 0 |
| 36,000 | 38,000 | 1,055 | 0 | 0 |
| 38,000 | 40,000 | 1,075 | 0 | 0 |
| 40,000 | 42,000 | 1,095 | 0 | 0 |
| 42,000 | 44,000 | 1,115 | 0 | 0 |
| 44,000 | 46,000 | 1,135 | 0 | 0 |
| 46,000 | 48,000 | 1,155 | 0 | 0 |
| 48,000 | 50,000 | 1,175 | 0 | 0 |
| 50,000 | 55,000 | 1,200 | 0 | 0 |
| 55,000 | 60,000 | 1,225 | 0 | 0 |
| 60,000 | 65,000 | 1,250 | 0 | 0 |
| 65,000 | 70,000 | 1,275 | 0 | 0 |
| 70,000 | 75,000 | 1,300 | 0 | 0 |
| 75,000 | 80,000 | 1,325 | 0 | 0 |
| 80,000 | 85,000 | 1,350 | 0 | 0 |
| 85,000 | 90,000 | 1,375 | 0 | 0 |
| 90,000 | 95,000 | 1,400 | 0 | 0 |
| 95,000 | 1,00,000 | 1,425 | 0 | 0 |
| 1,00,000 | 1,05,000 | 1,450 | 0 | 0 |
| 1,05,000 | 1,10,000 | 1,475 | 0 | 0 |
| 1,10,000 | 1,15,000 | 1,500 | 0 | 0 |
| 1,15,000 | 1,20,000 | 1,525 | 0 | 0 |
| 1,20,000 | 1,25,000 | 1,550 | 0 | 0 |
| 1,25,000 | 1,30,000 | 1,575 | 0 | 0 |
| 1,30,000 | 1,35,000 | 1,600 | 0 | 0 |
| 1,35,000 | 1,40,000 | 1,625 | 0 | 0 |
| 1,40,000 | 1,45,000 | 1,650 | 0 | 0 |
| 1,45,000 | 1,50,000 | 1,675 | 0 | 0 |
| 1,50,000 | 1,55,000 | 1,700 | 0 | 0 |
| 1,55,000 | 1,60,000 | 1,725 | 0 | 0 |
| 1,60,000 | 1,65,000 | 1,750 | 0 | 0 |
| 1,65,000 | 1,70,000 | 1,775 | 0 | 0 |

Table of rates of ad valorem fees, &c.—continued.

| When the amount or value of the subject-matter exceeds | But does not exceed | Proper Fee. | | |
|--|---------------------|-------------|----|----|
| Rs. | Rs. | Rs. | A. | P. |
| 1,70,000 | 1,75,000 | 1,800 | 0 | 0 |
| 1,75,000 | 1,80,000 | 1,825 | 0 | 0 |
| 1,80,000 | 1,85,000 | 1,850 | 0 | 0 |
| 1,85,000 | 1,90,000 | 1,875 | 0 | 0 |
| 1,90,000 | 1,95,000 | 1,900 | 0 | 0 |
| 1,95,000 | 2,00,000 | 1,925 | 0 | 0 |
| 2,00,000 | 2,05,000 | 1,950 | 0 | 0 |
| 2,05,000 | 2,10,000 | 1,975 | 0 | 0 |
| 2,10,000 | 2,15,000 | 2,000 | 0 | 0 |
| 2,15,000 | 2,20,000 | 2,025 | 0 | 0 |
| 2,20,000 | 2,25,000 | 2,050 | 0 | 0 |
| 2,25,000 | 2,30,000 | 2,075 | 0 | 0 |
| 2,30,000 | 2,35,000 | 2,100 | 0 | 0 |
| 2,35,000 | 2,40,000 | 2,125 | 0 | 0 |
| 2,40,000 | 2,45,000 | 2,150 | 0 | 0 |
| 2,45,000 | 2,50,000 | 2,175 | 0 | 0 |
| 2,50,000 | 2,55,000 | 2,200 | 0 | 0 |
| 2,55,000 | 2,60,000 | 2,225 | 0 | 0 |
| 2,60,000 | 2,65,000 | 2,250 | 0 | 0 |
| 2,65,000 | 2,70,000 | 2,275 | 0 | 0 |
| 2,70,000 | 2,75,000 | 2,300 | 0 | 0 |
| 2,75,000 | 2,80,000 | 2,325 | 0 | 0 |
| 2,80,000 | 2,85,000 | 2,350 | 0 | 0 |
| 2,85,000 | 2,90,000 | 2,375 | 0 | 0 |
| 2,90,000 | 2,95,000 | 2,400 | 0 | 0 |
| 2,95,000 | 3,00,000 | 2,425 | 0 | 0 |
| 3,00,000 | 3,05,000 | 2,450 | 0 | 0 |
| 3,05,000 | 3,10,000 | 2,475 | 0 | 0 |
| 3,10,000 | 3,15,000 | 2,500 | 0 | 0 |
| 3,15,000 | 3,20,000 | 2,525 | 0 | 0 |
| 3,20,000 | 3,25,000 | 2,550 | 0 | 0 |
| 3,25,000 | 3,30,000 | 2,575 | 0 | 0 |
| 3,30,000 | 3,35,000 | 2,600 | 0 | 0 |
| 3,35,000 | 3,40,000 | 2,625 | 0 | 0 |
| 3,40,000 | 3,45,000 | 2,650 | 0 | 0 |
| 3,45,000 | 3,50,000 | 2,675 | 0 | 0 |
| 3,50,000 | 3,55,000 | 2,700 | 0 | 0 |
| 3,55,000 | 3,60,000 | 2,725 | 0 | 0 |
| 3,60,000 | 3,65,000 | 2,750 | 0 | 0 |

Table of rates of *ad valorem* fees, &c.—continued.

| When the amount or value of the subject-matter exceeds | But does not exceed | Proper Fee. |
|--|---------------------|-------------|
| Rs. | Rs. | Rs. A. P. |
| 3,65,000 | 3,70,000 | 2,775 0 0 |
| 3,70,000 | 3,75,000 | 2,800 0 0 |
| 3,75,000 | 3,80,000 | 2,825 0 0 |
| 3,80,000 | 3,85,000 | 2,850 0 0 |
| 3,85,000 | 3,90,000 | 2,875 0 0 |
| 3,90,000 | 3,95,000 | 2,900 0 0 |
| 3,95,000 | 4,00,000 | 2,925 0 0 |
| 4,00,000 | 4,05,000 | 2,950 0 0 |
| 4,05,000 | 4,10,000 | 2,975 0 0 |
| 4,10,000 | | 3,000 0 0 |

SCHEDULE II.

Fixed Fees.

| NUMBER. | | PROPER FEE. |
|----------------------------------|---|------------------|
| I. Application * or petition ... | <p>(a.)—When presented to any officer of the Customs or Excise Department or to any Magistrate by any person having dealings with the Government, and when the subject-matter of such application relates exclusively to those dealings ;</p> <p>or when presented to any officer of Land Revenue by any person holding temporarily-settled land under direct engagement with Government, and when the subject-matter of the application or petition relates exclusively to such engagement ;</p> | <p>One anna.</p> |

* In writing, 2 N. W. P. 418.

SCHEDULE II—continued.

t.

Fixed Fees.

| NUMRER. | | PROPER FEE. |
|--|--|------------------|
| 1. Application or petition—(<i>continued</i>)... | <p>or when presented to any Municipal Commissioner under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservancy or improvement :</p> <p>or when presented to any Civil Court * other than a principal Civil Court of original jurisdiction, or to any Cantonment Magistrate sitting as a Court of Civil Judicature under Act No. III of 1859, or to any Court of Small Causes constituted under Act No. XI of 1865, or under Act XVI of 1868, section twenty, or to a Collector or other officer of revenue in relation to any suit or case in which the amount or value of the subject-matter is less than fifty rupees ;</p> <p>or when presented to any Civil, Criminal, or Revenue Court, or to any Board or executive officer for the purpose of obtaining a copy or translation of any judgment, decree, or order passed by such Court, Board, or officer, or of any other document† on record in such Court or Officer.</p> | <p>One anna,</p> |

SCHEDULE II—continued.

Fixed Fees.

| NUMBER. | PROPER FEE. |
|--|--------------|
| 1. Application or petition—(continued)... | |
| (b). When containing a complaint or charge of any offence other than an offence for which police-officers may, under the Criminal Procedure Code, arrest without warrant, and presented to any Criminal Court ; | Eight annas. |
| or when presented to a Civil, Criminal, or Revenue Court, or to a Collector, or any revenue officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity, and not otherwise provided for by this Act ; | Eight annas. |
| or to deposit in Court revenue or rent ; | |
| or for determination by a Court of the amount of compensation to be paid by a landlord to his tenant. | |
| (c.)—When presented to a Chief Commissioner or other chief controlling revenue or executive authority, or to a Commissioner of Revenue or Circuit, or to any chief officer charged with the executive administration of a Division, and not otherwise provided for by this Act | One rupee. |
| (d.)—When presented to a High Court ... | Two rupees. |

SCHEDULE II—continued.

Fixed Fees.

| NUMBER. | | PROPER FEE. |
|---|---|------------------|
| 2. Application for leave to sue as a pauper ... | ... | ... Eight annas. |
| 3. Application for leave to appeal as a pauper ... | (a)—When presented to a District Court ... | One rupee. |
| | (b.)—When presented to a Commissioner or a High Court ... | Two rupees. |
| 4. Plaint or memorandum of appeal in a suit to obtain possession under Act No. XVI of 1838, or Bombay Act No. V of 1864 (<i>to give Māmlatdārs' Courts jurisdiction in certain cases to maintain existing possession, or to restore possession to any party dispossessed otherwise than by course of law</i>) ... | ... | ... |
| 5. Plaint or memorandum of appeal in a suit to establish or disprove a right of occupancy ... | ... | ... Eight annas. |
| 6. Bail-bond or other instrument of obligation not otherwise provided for by this Act, when given by the direction of any Court or executive authority ... | ... | ... |
| 7. Undertaking under section forty-nine of the Indian Divorce Act. | ... | ... |

SCHEDULE II—continued.

Fixed Fees.

| NUMBER. | | PROPER FEE. |
|--|---|--------------|
| 8. Petition of objection to assessment under the Indian Income Tax Act... .. | ... | Two rupees. |
| 9. Petition of appeal under the Indian Income Tax Act, section twenty-one | ... | One rupee. |
| 10. Mukhtárnáma or Wakálatnáma. | When presented for the conduct of any one case— | |
| | (a)—to any Civil or Criminal Court other than a High Court, or to any Revenue Court, or to any Collector or Magistrate, or other executive officer, except such as are mentioned in clauses (b) and (c) of this Number | Eight annas. |
| | (b)—to a Commissioner of Revenue, Circuit, or Customs, or to any officer charged with the executive administration of a Division, not being the chief revenue or executive authority | One rupee. |
| | (c)—to a High Court, Chief Commissioner, Board of Revenue, or other chief controlling revenue or executive authority | Two rupees. |

SCHEDULE II—continued.

Fixed Fees.

| NUMBER. | | PROPER FEE. |
|--|--|---------------|
| 11. Memorandum of appeal when the appeal is not from an order rejecting a plaint, or from a decree or an order having the force of a decree, and is presented— | (a.)—to any Civil Court other than a High Court, or to any Revenue Court or executive officer other than the High Court or chief controlling revenue or executive authority | Eight annas. |
| | (b.)—to a High Court or Chief Commissioner, or other chief controlling executive or revenue authority | Two rupees. |
| 12. Caveat ... | } | Five rupees. |
| 13. Application under Act No. X of 1859, section twenty-six, or Bengal Act No. VI of 1862; section nine, or Bengal Act No. VIII of 1869, section thirty-seven. | | |
| 14. Petition in a suit under the Native Converts' Marriage Dissolution Act, 1866 ... | | |
| 15. Plaint or memorandum of appeal in a suit to obtain possession of a wife. | } | Eight rupees. |
| 16. Administration-bond | | |
| 17. Plaint or memorandum of appeal in each of the following suits:— | | |
| i. to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court : | | |

Fixed Fees.

| NUMBER. | | PROPER FEE. |
|--|-----|----------------|
| ii. to alter or cancel any entry in a register of the names of proprietors of revenue-paying estates : | | |
| iii. to obtain a declaratory decree where no consequential relief is prayed : | | |
| iv. to set aside an award : | | |
| v. to set aside an adoption : | | |
| vi. every other suit where it is not possible to estimate at a money-value the subject-matter in dispute, and which is not otherwise provided for by this Act ... | ... | Ten rupees. |
| 18. Application under section three hundred and twenty-six of the Code of Civil Procedure | | |
| 19. Agreement under section three hundred and twenty-eight of the same Code ... | | |
| 20. Every petition under the Indian Divorce Act except petitions under section forty-four of the same Act, and every memorandum of appeal under section fifty-five of the same Act ... | ... | Twenty rupees. |
| 21. Plaint or memorandum of appeal under the Parsi Marriage and Divorce Act, 1865 ... | | |

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THE INDIAN EVIDENCE ACT.

No. I of 1872.

[Received the Governor-General's assent on the 15th March 1872.]

WHEREAS it is expedient to consolidate, define, and amend the Law of
Preamble. Evidence, it is hereby enacted as follows :—

PART I.

RELEVANCY OF FACTS.

CHAPTER I.—PRELIMINARY.

1. This Act may be called “The Indian Evidence Act, 1872.” It
Short title. extends to the whole of British India,* and applies
Extent. to all judicial proceedings in or before any Court,
Commencement of Act. including Courts Martial,† but not to affidavits
presented to any Court or officer, nor to proceedings before an arbitrator : and
it shall come into force on the first day of September 1872.

2. On and from that day the following laws
Repeal of enactments. shall be repealed :—

(1.) All rules of evidence not contained in any Statute, Act, or Regulation
in force in any part of British India ;

(2.) All such rules, laws, and regulations as have acquired the force of
law under the twenty-fifth section of “The Indian Councils’ Act, 1861,” in
so far as they relate to any matter herein provided for ; and

(3.) The enactments mentioned in the schedule hereto, to the extent
specified in the third column of the said schedule.

But nothing herein contained shall be deemed to affect any provision of
any Statute, Act, or Regulation in force in any part of British India, and not
hereby expressly repealed.

3. In this Act the following words and expressions are used in the
Interpretation-clause. following senses, unless a contrary intention appears
from the context :—

“Court” includes all Judges and Magistrates and all persons except
arbitrators legally authorized to take evidence.

“Fact” means and includes (1) any thing, state of things, or relation of
things capable of being perceived by the senses ; (2)
any mental condition of which any person is conscious.

* It has been applied to the Haidarábád Assigned Districts and the Cantonment of
Sikandarábád, Foreign Department, No. 80 J, dated May 2, 1872.

† This is repealed, as to European Courts Martial, by the Mutiny Act : “No Court
Martial shall, in respect of the conduct of its proceeding, or the reception or rejection of
evidence, be subject to the provisions of the Indian Evidence Act, 1872, or any Act of
any legislature other than the Parliament of the United Kingdom.”—38 Vic., c. 7, s. 101.

Illustrations.

- (a.) That there are certain objects arranged in a certain order in a certain place is a fact.
 (b.) That a man heard or saw something is a fact.
 (c.) That a man said certain words is a fact.
 (d.) That a man holds a certain opinion, has a certain intention, acts in good faith or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.
 (e.) That a man has a certain reputation is a fact.

One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

"Relevant."

The expression, "facts in issue," means and includes any fact from which, either by itself or in connection with other facts, the

"Facts in issue."

existence, non-existence, nature, or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

Explanation.—Whenever, under the provisions of the law for the time being in force relating to Civil Procedure, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact in issue.

Illustrations.

A is accused of the murder of B.
 At his trial the following facts may be in issue :—
 That A caused B's death.
 That A intended to cause B's death.
 That A had received grave and sudden provocation from B.
 That A, at the time of doing the act which caused B's death, was, by reason of unsoundness of mind, incapable of knowing its nature.

"Document" means any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of these means, intended to be used, or which may be used, for the purpose of recording that matter.

Illustrations.

A writing is a document.
 Words printed, lithographed, or photographed, are documents.
 A map or plan is a document.
 An inscription on a metal plate or stone is a document.
 A caricature is a document.

"Evidence" means and includes (1) all statements which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry; such statements are called oral evidence: (2) all documents produced for the inspection of the Court; such documents are called documentary evidence.

A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

"Proved."

A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

"Disproved."

"Not proved"

A fact is said not to be proved when it is neither proved nor disproved.

4. Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.

"May presume."

Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.

"Shall presume."

When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

"Conclusive proof."

CHAPTER II.—OF THE RELEVANCY OF FACTS.

5. Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others.

Evidence may be given of facts in issue and relevant facts.

Explanation.—This section shall not enable any person to give evidence of a fact which he is disqualified to prove by any provision of the law for the time being in force relating to Civil Procedure.

Illustrations.

(a.) A is tried for the murder of B by beating him with a club with the intention of causing his death.

At A's trial the following facts are in issue—

A's beating B with the club.

A's causing B's death by such beating.

A's intention to cause B's death.

(b.) A suitor does not bring with him, and have in readiness for production at the first hearing of the case, a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure.

6. Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place, or at different times and places.

Relevancy of facts forming part of same transaction.

Illustrations.

(a.) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

(b.) A is accused of waging war against the Queen by taking part in an armed insurrection in which property is destroyed, troops are attacked, and jails are broken open. The occurrence of these facts is relevant as forming part of the general transaction, though A may not have been present at all of them.

(c.) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

(d.) The question is whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

7. Facts which are the occasion, cause, or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

Facts which are occasion, cause, or effect of facts in issue.

Illustrations.

(a.) The question is whether A robbed B.

The facts that, shortly before the robbery, B went to a fair with money in his possession, and that he showed it, or mentioned the fact that he had it, to third persons, are relevant.

(b.) The question is whether A murdered B.

Marks on the ground produced by a struggle at or near the place where the murder was committed are relevant facts.

(c.) The question is whether A poisoned B.

The state of B's health before the symptoms ascribed to poison, and habits of B, known to A, which afforded an opportunity for the administration of poison, are relevant facts.

Motive, preparation, and previous or subsequent conduct.

8. Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1.—The word “conduct” in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

Illustrations.

(a.) A is tried for the murder of B.

The facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.

(b.) A sues B upon a bond for the payment of money. B denies the making of the bond.

The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose, is relevant.

(c.) A is tried for the murder of B by poison.

The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

(d.) The question is whether a certain document is the will of A.

The facts that, not long before the date of the alleged will, A made inquiry into matters to which the provisions of the alleged will relate, that he consulted vakils in reference to making the will, and that he caused drafts of other wills to be prepared, of which he did not approve, are relevant.

(e.) A is accused of a crime.

The facts that, either before, or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

(f.) The question is whether A robbed B.

The facts that, after B was robbed, C said in A's presence, ‘The police are coming to look for the man who robbed B,’ and that immediately afterwards A ran away, are relevant.

(g.) The question is whether A owes B rupees 10,000.

The facts that A asked C to lend him money, and that D said to C in A's presence and hearing, ‘I advise you not to trust A, for he owes B 10,000 rupees,’ and that A went away without making any answer, are relevant facts.

(h.) The question is whether A committed a crime.

The fact that A absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter, are relevant.

(i.) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

(j.) The question is whether A was ravished.

The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that, without making a complaint, she said that she had been ravished, is not relevant as conduct under this section, though it may be relevant—

as a dying declaration under section 32, clause 1, or

as corroborative evidence under section 157.

(k.) The question is whether A was robbed.

The facts that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that he said he had been robbed without making any complaint is not relevant as conduct under this section, though it may be relevant—

as a dying declaration under section 32, clause 1, or

as corroborative evidence under section 157.

9. Facts necessary to explain or introduce a fact in issue or relevant

Facts necessary to explain or introduce a fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

Illustrations.

(a.) The question is whether a given document is the will of A.

The state of A's property and of his family at the date of the alleged will may be relevant facts.

(b.) A sues B for a libel imputing disgraceful conduct to A. B affirms that the matter alleged to be libellous is true.

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B.

(c.) A is accused of a crime.

The fact that, soon after the commission of the crime, A absconded from his house, is relevant, under section 8, as conduct subsequent to and affected by facts in issue.

The fact that, at the time when he left home, he had sudden and urgent business at the place to which he went, is relevant as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

(d.) A sues B for inducing C to break a contract of service made by him with A. C, on leaving A's service, says to A, 'I am leaving you because B has made me a better offer.' This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue.

(e.) A, accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says as he delivers it, 'A says you are to hide this.' B's statement is relevant as explanatory of a fact which is part of the transaction.

(f.) A is tried for a riot, and is proved to have marched at the head of a mob. The cries of the mob are relevant as explanatory of the nature of the transaction.

10. Where there is reasonable ground to believe that two or more

persons have conspired together to commit an offence or an actionable wrong, anything said, done, or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be

so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Illustration.

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Queen.

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Cabul the money which C had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant both to prove the existence of the conspiracy and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it.

When facts not otherwise relevant become relevant. **11. Facts not otherwise relevant are relevant—**

- (1) if they are inconsistent with any fact in issue or relevant fact;
- (2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.*

Illustrations.

(a.) The question is whether A committed a crime at Calcutta on a certain day.

The fact that on that day A was at Lahore is relevant.

The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

(b.) The question is whether A committed a crime.

The circumstances are such that the crime must have been committed either by A, B, C, or D. Every fact which shows that the crime could have been committed by no one else, and that it was not committed by either B, C, or D, is relevant.

In suits for damages, facts tending to enable Court to determine amount are relevant.

12. In suits in which damages are claimed, any fact which will enable the Court to determine the amount of damages which ought to be awarded is relevant.

Facts relevant when right or custom is in question.

13. Where the question is as to the existence of any right or custom, the following facts are relevant—

(a.) Any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted, or denied, or which was inconsistent with its existence.

(b.) Particular instances in which the right or custom was claimed, recognized, or exercised, or in which its exercise was disputed, asserted, or departed from.

Illustration.

The question is whether A has a right to a fishery. A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father, a subsequent grant of the fishery by A's father, irreconcilable with the mortgage, particular instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours, are relevant facts.

14. Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will, or good-will towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant, when the existence of any such state of mind, or body, or bodily feeling, is in issue or relevant.

Explanation.—A fact relevant as showing the existence of a relevant state of mind must show that it exists not generally, but in reference to the particular matter in question.

Illustrations.

(a.) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article.

The fact that at the same time he was in possession of many other stolen articles is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.

(b.) A is accused of fraudulently delivering to another person a piece of counterfeit coin which, at the time when he delivered it, he knew to be counterfeit.

The fact that at the time of its delivery A was possessed of a number of other pieces of counterfeit coin is relevant.

(c.) A sues B for damage done by a dog of B's, which B knew to be ferocious.

The facts that the dog had previously bitten X, Y, and Z, and that they had made complaints to B, are relevant.

(d.) The question is whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious.

The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee, if the payee had been a real person, is relevant, as showing that A knew that the payee was a fictitious person.

(e.) A is accused of defaming B by publishing an imputation intended to harm the reputation of B.

The fact of previous publications by A respecting B, showing ill-will on the part of A towards B, is relevant, as proving A's intention to harm B's reputation by the particular publication in question.

The facts that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B.

(f.) A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent, suffered loss.

The fact that, at the time when A represented C to be solvent, C was supposed to be solvent by his neighbours and by persons dealing with him, is relevant, as showing that A made the representation in good faith.

(g.) A is sued by B for the price of work done by B upon a house of which A is owner by the order of C, a contractor.

A's defence is that B's contract was with C.

The fact that A paid C for the work in question is relevant, as proving that A did, in good faith, make over to C the management of the work in question, so that C was in a position to contract with B on C's own account, and not as agent for A.

(h.) A is accused of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found.

The fact that public notice of the loss of the property had been given in the place where A was, is relevant, as showing that A did not, in good faith, believe that the real owner of the property could not be found.

The fact that A knew or had reason to believe that the notice was given fraudulently by C, who had heard of the loss of the property, and wished to set up a false claim to it, is relevant, as showing that the fact that A knew of the notice did not disprove A's good faith.

(i.) A is charged with shooting at B with intent to kill him. In order to show A's intent, the fact of A's having previously shot at B may be proved.

(j.) A is charged with sending threatening letters to B. Threatening letters previously sent by A to B may be proved as showing the intention of the letters.

(k.) The question is whether A has been guilty of cruelty towards B, his wife.

Expressions of their feeling towards each other shortly before or after the alleged cruelty are relevant facts.

(l.) The question is whether A's death was caused by poison.

Statements made by A during his illness as to his symptoms are relevant facts.

(m.) The question is, what was the state of A's health at the time when an assurance on his life was effected.

Statements made by A as to the state of his health at or near the time in question are relevant facts.

(n.) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use, whereby A was injured.

The fact that B's attention was drawn on other occasions to the defect of that particular carriage is relevant.

The fact that B was habitually negligent about the carriages which he let to hire is irrelevant.

(o.) A is tried for the murder of B by intentionally shooting him dead.

The fact that A, on other occasions, shot at B, is relevant, as showing his intention to shoot B.

The fact that A was in the habit of shooting at people with intent to murder them is irrelevant.

(p.) A is tried for a crime.

The fact that he said something indicating an intention to commit that particular crime is relevant.

The fact that he said something indicating a general disposition to commit crimes of that class is irrelevant.

15. When there is a question whether an act was accidental or intentional, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Facts bearing on question whether act was accidental or intentional.

Illustrations.

(a.) A is accused of burning down his house in order to obtain money for which it insured.

The facts that A lived in several houses successively, each of which he insured, in each of which a fire occurred, and after each of which fires A received payment from a different insurance-office, are relevant, as tending to show that the fires were not accidental.

(b.) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive.

The question is whether this false entry was accidental or intentional.

The facts that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant.

(c.) A is accused of fraudulently delivering to B a counterfeit rupee.

The question is whether the delivery of the rupee was accidental.

The facts that, soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D, and E, are relevant, as showing that the delivery to B, was not accidental.

16. When there is a question whether a particular act was done, existence of any course of business according to which it naturally would have been done is a relevant fact.

Existence of course of business when relevant.

Illustrations.

(a.) The question is whether a particular letter was despatched.

The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that that particular letter was put in that place, are relevant.

(b.) The question is whether a particular letter reached A. The facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant.

ADMISSIONS.

17. An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons and under the circumstances hereinafter mentioned.

Admission defined.

18. Statements made by a party to the proceeding, or by an agent to any such party whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them, are admissions.

Admission by party to proceeding or his agent ;

Statements made by parties to suits suing or sued in a representative character are not admissions, unless they were made while the party making them held that character.

by suitor in representative character ;

Statements made by—

(1) persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested, or by party interested in subject-matter.
(2) persons from whom the parties to the suit have derived their interest in the subject-matter of the suit, by person from whom interest derived.
are admissions, if they are made during the continuance of the interest of the persons making the statements.

19. Statements made by persons whose position or liability it is necessary to prove as against any party to the suit are admissions, if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability.

Illustration.

A undertakes to collect rents for B.
B sues A for not collecting rent due from C to B.
A denies that rent was due from C to B.
A statement by C that he owed B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B.

Admissions by persons expressly referred to by party to suit.

20. Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

Illustration.

The question is whether a horse sold by A to B is sound.
A says to B, 'Go and ask C, C knows all about it.' C's statement is an admission.

21. Admissions are relevant, and may be proved as against the person who makes them, or his representative in interest ;* but they cannot be proved by or on behalf of the person who makes them, or by his representative in interest, except in the following cases :—

(1.) An admission may be proved by or on behalf of the person making it when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section 32.

(2.) An admission may be proved by or on behalf of the person making it when it consists of a statement of the existence of any state of mind or body relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

(3.) An admission may be proved by or on behalf of the person making it if it is relevant otherwise than as an admission.

Illustrations.

(a.) The question between A and B is whether a certain deed is or is not forged. A affirms that it is genuine, B that it is forged.

A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged ; but A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged.

(b.) A, the captain of a ship, is tried for casting her away.

Evidence is given to show that the ship was taken out of her proper course.

A produces a book kept by him in the ordinary course of his business showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. A may prove these statements, because they would be admissible between third parties if he were dead under section 32, clause 2.

(c.) A is accused of a crime committed by him at Calcutta. He produces a letter written by himself and dated at Lahore on that day, and bearing the Lahore post-mark of that day.

The statement in the date of the letter is admissible, because, if A were dead, it would be admissible under section 32, clause 2.

(d.) A is accused of receiving stolen goods knowing them to be stolen.

He offers to prove that he refused to sell them below their value.

A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by facts in issue.

(e.) A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

He offers to prove that he asked a skilful person to examine the coin, as he doubted whether it was counterfeit or not, and that that person did examine it, and told him it was genuine.

A may prove these facts for the reasons stated in the last preceding illustration.

22. Oral admissions as to the contents of a document are not re-

levant, unless and until the party proposing to prove When oral admissions as to contents of documents are relevant. them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

23. In civil cases no admission is relevant, if it is made either

Admissions in civil cases upon an express condition that evidence of it is not to be given, or under circumstances from which the Court when relevant. can infer that the parties agreed together that evidence of it should not be given.

Explanation.—Nothing in this section shall be taken to exempt any barrister, pleader, attorney, or vakil from giving evidence of any matter of which he may be compelled to give evidence under section 126.

24. A confession made by an accused person is irrelevant in a criminal

proceeding if the making of the confession appears Confession caused by inducement, threat, or promise, to the Court to have been caused by any inducement, threat, or promise, having reference to the when irrelevant in criminal proceeding. charge against the accused person, proceeding from a person in authority,* and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

Confession to a police-officer not to be proved.

25. No confession made to a police-officer shall be proved as against a person accused of any offence.

Confession by accused while in custody of police not to be proved against him.

26. No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a magistrate, shall be proved as against such person.

27. Provided that,

How much of information received from accused may be proved.

when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts

to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

Confession made after removal of impression caused by inducement, threat, or promise, relevant.

28. If such a confession as is referred to in section 24 is made after the impression caused by any such inducement, threat, or promise, has, in the opinion of the Court, been fully removed, it is relevant.

29. If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise

Confession, otherwise relevant, not to become irrelevant because of promise of secrecy, &c.

of secrecy, or in consequence of deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in

answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

30. When more persons than one are being tried jointly for the same

Consideration of proved confession affecting person making it and others jointly under trial for same offence.

offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.*

Illustrations.

(a.) A and B are jointly tried for the murder of C. It is proved that A said, "B and I murdered C." The Court may consider the effect of this confession as against B.

(b.) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said, "A and I murdered C."

This statement may not be taken into consideration by the Court against A, as B is not being jointly tried.

31. Admissions are not conclusive proof of the matters admitted but

Admissions not conclusive proof, but may estop.

they may operate as estoppels under the provisions hereinafter contained.

Statements by persons who cannot be called as witnesses.

32. Statements, written or verbal, of relevant facts made by a person

Cases in which statement of relevant fact by person who is dead or cannot be found, &c., is relevant.

who is dead or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case,

appears to the Court unreasonable, are themselves relevant facts in the following cases:

(1.) When the statement is made by a person as to the cause of his death, or

When it relates to cause of death;

as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant, whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

(2.) When the statement was made by such person in the ordinary course of

or is made in course of business.

business, and in particular when it consists of any entry or memorandum made by him in books kept in

the ordinary course of business, or in the discharge of professional duty ; or of an acknowledgment, written or signed by him, of the receipt of money, goods, securities, or property of any kind ; or of a document used in commerce, written or signed by him ; or of the date of a letter or other document usually dated, written or signed by him.

(3.) When the statement is against the pecuniary or proprietary interest of or against interest of the person making it, or when, if true, it would expose him, or would have exposed him, to a criminal prosecution or to a suit for damages.

(4.) When the statement gives the opinion of any such person as to the existence of any public right or custom, or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom, or matter had arisen.

(5.) When the statement relates to the existence of any relationship by blood, or relates to existence of marriage, or adoption* between persons as to whose relationship by blood, marriage, or adoption the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

(6.) When the statement relates to the existence of any relationship by blood, or is made in will or deed marriage, or adoption* between persons deceased, and relating to family affairs ; is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family-pedigree, or upon any tombstone, family-portrait, or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

(7.) When the statement is contained in any deed, will, or other document or in document relating to transaction mentioned in section thirteen, clause a. which relates to any such transaction as is mentioned in section thirteen, clause a.

or is made by several persons, and expresses feelings relevant to matter in question.

(8.) When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

Illustrations.

(a.) The question is whether A was murdered by B ; or A dies of injuries received in a transaction in the course of which she was ravished. The question is whether she was ravished by B ; or The question is whether A was killed by B under such circumstances that a suit would lie against B by A's widow.

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape, and the actionable wrong under consideration, are relevant facts.

(b.) The question is as to the date of A's birth.

An entry in the diary of a deceased surgeon, regularly kept in the course of business, stating that, on a given day, he attended A's mother, and delivered her of a son, is a relevant fact.

(c.) The question is whether A was in Calcutta on a given day.

A statement in the diary of a deceased solicitor, regularly kept in the course of business, that, on a given day, the solicitor attended A at a place mentioned in Calcutta for the purpose of conferring with him upon specified business, is a relevant fact.

(d.) The question is whether a ship sailed from Bombay harbour on a given day.

* See Act XVIII of 1872, s. 2.

A letter written by a deceased member of a merchant's firm, by which she was chartered, to their correspondents in London, to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbour, is a relevant fact.

(e.) The question is whether rent was paid to A for certain land.

A letter from A's deceased agent to A, saying that he had received the rent on A's account, and held it at A's orders, is a relevant fact.

(f.) The question is whether A and B were legally married.

The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime is relevant.

(g.) The question is whether A, a person who cannot be found, wrote a letter on a certain day.

The fact that a letter written by him is dated on that day is relevant.

(h.) The question is what was the cause of the wreck of a ship.

A protest made by the captain, whose attendance cannot be procured, is a relevant fact.

(i.) The question is whether a given road is a public way.

A statement by A, a deceased headman of the village, that the road was public, is a relevant fact.

(j.) The question is, what was the price of grain on a certain day in a particular market.

A statement of the price made by a deceased banya in the ordinary course of his business is a relevant fact.

(k.) The question is whether A, who is dead, was the father of B.

A statement by A that B was his son is a relevant fact.

(l.) The question is, what was the date of the birth of A.

A letter from A's deceased father to a friend announcing the birth of A on a given day is a relevant fact.

(m.) The question is whether and when A and B were married.

An entry in a memorandum book by C, the deceased father of B, of his daughter's marriage with A on a given date, is a relevant fact.

(n.) A sues B for a libel expressed in a painted caricature exposed in a shop-window. The question is as to the similarity of the caricature and its libellous character. The remarks of a crowd of spectators on these points may be proved.

33. Evidence given by a witness in a judicial proceeding, or

Evidence in a former judicial proceeding when relevant. before any person authorised by law to take it, is relevant for the purpose of proving in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding; the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable.*

Provided that the proceeding was between the same parties or their representatives in interest; that the adverse party in the first proceeding had the right and opportunity to cross-examine; that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation.—A criminal trial or enquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES.

34. Entries in books of account, regularly kept in the course of

business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

Illustration.

A sues B for Rs. 1,000, and shows entries in his account-books showing B to be indebted to him to this amount. The entries are relevant, but are not sufficient without other evidence to prove the debt.

* *Reg. v. Mowjan*, 20 *Suth. W. R.*, C. R., 69.

35. An entry in any public or other official book, register, or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or record is kept, is itself a relevant fact.

36. Statements of facts in issue or relevant facts made in published maps or charts generally offered for public sale, or in maps or plans when relevant. maps or plans made under the authority of Government, as to matters usually represented or stated in such maps, charts, or plans, are themselves relevant facts.

37. When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Act of Parliament or in any Act of the Governor-General of India in Council, or of the Governors in Council of Madras or Bombay, or of the Lieutenant-Governor in Council of Bengal, or in a notification of the Government appearing in the *Gazette of India*, or in the *Gazette* of any Local Government, or in any printed paper purporting to be the *London Gazette* or the Government Gazette of any colony or possession of the Queen, is a relevant fact.

38. When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country, and to contain any such law, and any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant.

HOW MUCH OF A STATEMENT IS TO BE PROVED.

39. When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, book, or series of letters or papers, as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

JUDGMENTS OF COURTS OF JUSTICE WHEN RELEVANT.

40. The existence of any judgment, order, or decree, which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such Court ought to take cognizance of such suit, or to hold such trial.

41. A final judgment, order, or decree of a competent Court in the exercise of probate, matrimonial, admiralty, or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person

to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person, but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order, or decree is conclusive proof that any legal character which it confers accrued at the time when such judgment, order, or decree came into operation; that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order, or decree* declares it to have accrued to that person; that any legal character which it takes away from any such person ceased at the time from which such judgment, order, or decree* declared that it had ceased or should cease; and that any thing to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order, or decree* declares that it had been or should be his property.

42. Judgments, orders, or decrees, other than those mentioned in

Judgment, order, or decree between third parties when irrelevant, and when not.

section 41, are relevant if they relate to matters of a public nature relevant to the inquiry; but such judgments, orders, or decrees are not conclusive proof of that which they state.†

Illustration.

A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C for a trespass in the same land, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

43. Judgments, orders, or decrees, other than those mentioned in

What judgments, &c., not relevant.

sections 40, 41, and 42, are irrelevant, unless the existence of such judgment, order, or decree, is a fact in issue, or is relevant under some other provision of this Act.

Illustrations.

(a.) A and B separately sue C for a libel which reflects upon each of them. C in each case says that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case or in neither.

A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C.

(b.) A prosecutes B for adultery with C, A's wife.

B denies that C is A's wife, but the Court convicts B of adultery.

Afterwards C is prosecuted for bigamy in marrying B during A's lifetime. C says that she never was A's wife.

The judgment against B is irrelevant as against C.

(c.) A prosecutes B for stealing a cow from him. B is convicted.

A afterwards sues C for the cow which B had sold to him before his conviction. As between A and C the judgment against B is irrelevant.

(d.) A has obtained a decree for the possession of land against B. C, B's son, murders A in consequence.

The existence of the judgment is relevant as showing motive for a crime.

* See Act XVIII of 1872, s. 3.

† 22 *Suth. W. R.*, C. R., 365.

44. Any party to a suit or other proceeding may show that any fraud, collusion, and incompetency of Court may be proved. judgment, order, or decree which is relevant under section 40, 41, or 42, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.

OPINIONS OF THIRD PERSONS WHEN RELEVANT.

45. When the Court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of hand-writing, the opinions upon that point of persons specially skilled in such foreign law, science, or art, or in questions as to identity of hand-writing,* are relevant facts.
Such persons are called experts.

Illustrations.

(a.) The question is whether the death of A was caused by poison. The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died are relevant.

(b.) The question is whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(c.) The question is whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.

The opinions of experts on the question whether the two documents were written by the same person or by different persons are relevant.

46. Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts when such opinions are relevant.
Facts bearing upon opinions of experts.

Illustrations.

(a.) The question is whether A was poisoned by a certain poison. The fact that other persons who were poisoned by that poison exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison is relevant.

(b.) The question is whether an obstruction to a harbour is caused by a certain sea-wall. The fact that other harbours similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at about the same time, is relevant.

47. When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person is a relevant fact.
Opinion as to handwriting when relevant.

Explanation.—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

* See Act XVIII of 1872, s. 4.

Illustration.

The question is whether a given letter is in the handwriting of A, a merchant in London. B is a merchant in Calcutta, who has written letters addressed to A, and received letters purporting to be written by him. C is B's clerk, whose duty it was to examine and file B's correspondence. D is B's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose of advising with him thereon.

The opinions of B, C, and D on the question whether the letter is in the handwriting of A are relevant, though neither B, C, nor D ever saw A write.

48. When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed, are relevant.

Explanation—The expression, 'general custom or right,' includes customs or rights common to any considerable class of persons.

Illustration.

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

49. When the Court has to form an opinion as to the usages and tenets of any body of men or family, the constitution and government of any religious or charitable foundation, or the meaning of words or terms used in particular districts or by particular classes of people, the opinions of persons having special means of knowledge thereon are relevant facts.

50. When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact: Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, or in prosecutions under section 494, 495, 497, or 498 of the Indian Penal Code.

Illustrations.

(a.) The question is whether A and B were married. The fact that they were usually received and treated by their friends as husband and wife is relevant.

(b.) The question is whether A was the legitimate son of B. The fact that A was always treated as such by members of the family is relevant.

51. Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

Illustration.

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

CHARACTER WHEN RELEVANT.

52. In civil cases the fact that the character of any person

concerned is such as to render probable or improbable any conduct imputed to him is irrelevant, except in so far as such character appears from facts otherwise relevant.

In criminal cases, previous good character relevant.

53. In criminal proceedings the fact that the person accused is of a good character is relevant.

54. In criminal proceedings the fact that the accused person

has been previously convicted of any offence is relevant ; but the fact that he has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

has been previously convicted of any offence is relevant ; but the fact that he has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

Explanation.—This section does not apply to cases in which the bad character of any person is itself a fact in issue.

55. In civil cases the fact that the character of any person is

Character as affecting damages. such as to affect the amount of damages which he ought to receive is relevant.

Explanation.—In sections 52, 53, 54, and 55, the word ‘character’ includes both reputation and disposition ; but evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation and disposition were shown.

PART II.

ON PROOF.

CHAPTER III.—FACTS WHICH NEED NOT BE PROVED.

No evidence required of relevant fact judicially noticed.

56. No fact of which the Court will take judicial notice need be proved.

Facts of which Court must take judicial notice.

57. The Court shall take judicial notice of the following facts :—

(1.) All laws or rules having the force of law now or heretofore in force or hereafter to be in force in any part of British India :

(2.) All public Acts passed or hereafter to be passed by Parliament and all local and personal Acts directed by Parliament to be judicially noticed :

(3.) Articles of War for Her Majesty’s Army or Navy :

(4.) The course of proceeding of Parliament and of the Councils for the purposes of making Laws and Regulations established under the Indian Councils’ Act or any other law for the time being relating thereto.

Explanation.—The word ‘Parliament’ in clauses 2 and 4 includes—

1. The Parliament of the United Kingdom of Great Britain and Ireland ;

2. The Parliament of Great Britain ;

3. The Parliament of England ;

4. The Parliament of Scotland ; and

5. The Parliament of Ireland.

(5.) The accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland :

(6.) All seals of which English Courts take judicial notice : the seals of all the Courts of British India, and of all Courts out of British India, established by the authority of the Governor-General or any Local Government in Council ; the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public, and all seals which any person is authorized to use by any Act of Parliament or other Act or Regulation having the force of law in British India :

(7.) The accession to office, names, titles, functions, and signatures of the persons filling for the time being any public office in any part of British India, if the fact of their appointment to such office is notified in the *Gazette of India*, or in the official Gazette of any Local Government :

(8.) The existence, title, and national flag of every State or Sovereign recognized by the British Crown :

(9.) The divisions of time, the geographical divisions of the world, and public festivals, fasts, and holidays notified in the official Gazette :

(10.) The territories under the dominion of the British Crown :

(11.) The commencement, continuance, and termination of hostilities between the British Crown and any other State or body of persons :

(12.) The names of the members and officers of the Court, and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attornies, proctors, vakils, pleaders, and other persons authorized by law to appear or act before it:

(13.) The rule of the road on land or at sea.*

In all these cases, and also on all matters of public history, literature, science, or art, the Court may resort for its aid to appropriate books or documents of reference.

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so, unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

58. No fact need be proved in any proceeding which the parties

Facts admitted need not thereto or their agents agree to admit at the hearing, be proved. or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings: Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

• CHAPTER IV.—OF ORAL EVIDENCE.

Proof of facts by oral evidence.

59. All facts, except the contents of documents, may be proved by oral evidence.

Oral evidence must be direct.

60. Oral evidence must, in all cases whatever, be direct; that is to say—

If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it.

If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it.

If it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner.

If it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds :

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatise, if the author is dead, or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable.

* See Act XVIII of 1872, s. 5.

Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

CHAPTER V.—OF DOCUMENTARY EVIDENCE.

Proof of contents of documents.

61. The contents of documents may be proved either by primary or by secondary evidence.

Primary evidence.

62. Primary evidence means the document itself produced for the inspection of the Court.

Explanation 1.—Where a document is executed in several parts, each part is primary evidence of the document.

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2.—Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest; but where they are all copies of a common original, they are not primary evidence of the contents of the original.

Illustration.

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

Secondary evidence.

63. Secondary evidence means and includes—

- (1.) Certified copies given under the provisions hereinafter contained.
- (2.) Copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies.
- (3.) Copies made from or compared with the original.
- (4.) Counterparts of documents as against the parties who did not execute them.
- (5.) Oral accounts of the contents of a document given by some person who has himself seen it.

Illustrations.

(a.) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(b.) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter if it is shown that the copy made by the copying machine was made from the original.

(c.) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

(d.) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.

Proof of documents by primary evidence.

64. Documents must be proved by primary evidence except in the cases hereinafter mentioned.

Cases in which secondary evidence relating to documents may be given.

65. Secondary evidence may be given of the existence, condition, or contents of a document in the following cases :—

(a.) When the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or of any person

out of reach of or not subject to the process of the Court, or of any person legally bound to produce it, and when, after notice mentioned in section 66, such person does not produce it.

(b.) When the existence, condition, or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest.

(c.) When the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time.

(d.) When the original is of such a nature as not to be easily moveable.

(e.) When the original is a public document within the meaning of section 74.

(f.) When the original is a document of which a certified copy is permitted, by this Act, or by any other law in force in British India, to be given in evidence.

(g.) When the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases *a*, *c*, and *d*, any secondary evidence of the contents of the document is admissible.

In case *b*, the written admission is admissible.

In case *e* or *f*, a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case *g*, evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

66. Secondary evidence of the contents of the documents referred to in

section 65, clause *a*, shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to his attorney or pleader,* such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case :

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it :—

(1.) When the document to be proved is itself a notice.

(2.) When, from the nature of the case, the adverse party must know that he will be required to produce it.

(3.) When it appears or is proved that the adverse party has obtained possession of the original by fraud or force.

(4.) When the adverse party or his agent has the original in Court.

(5.) When the adverse party or his agent has admitted the loss of the document.

(6.) When the person in possession of the document is out of reach of, or not subject to, the process of the Court.

Proof of signature and handwriting of person alleged to have signed or written document produced.

67. If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

* See Act XVIII of 1872, s. 6.

68. If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and, subject to the process of the Court, capable of giving evidence.

Proof of execution of document required by law to be attested.

69. If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

Proof where no attesting witness found.

70. The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

Admission of execution by party to attested document.

Proof when attesting witness denies the execution.

71. If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

Proof of document not required by law to be attested.

72. An attested document not required by law to be attested may be proved as if it was unattested.

73. In order to ascertain whether a signature, writing, or seal, is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal, has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court, to compare the words or figures so written with any words or figures alleged to have been written by such person.

PUBLIC DOCUMENTS.

74. The following documents are public documents :—

Public documents.

1. Documents forming the Acts, or records of the Acts—

- (i) of the sovereign authority,
- (ii) of official bodies and tribunals, and
- (iii) of public officers, legislative, judicial, and executive, whether of British India, or of any other part of Her Majesty's dominions, or of a foreign country.

2. Public records kept in British India of private documents.

Private documents.

75. All other documents are private.

76. Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document, or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is author-

Certified copies of public documents.

ized by law to make use of a seal, and such copies so certified shall be called certified copies.

Explanation.—Any officer who by the ordinary course of official duty is authorized to deliver such copies shall be deemed to have the custody of such documents within the meaning of this section.

77. Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

Proof of other official documents.

78. The following public documents may be proved as follows :

(1.) Acts, orders, or notifications of the Executive Government of British India in any of its departments, of any Local Government, or any department of any local Government—by the records of the departments certified by the heads of those departments respectively, or by any document purporting to be printed by order of any such Government :

(2.) The proceedings of the legislatures—by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of Government :

(3.) Proclamations, orders, or regulations issued by Her Majesty or by the Privy Council, or by any department of Her Majesty's Government—by copies or extracts contained in the *London Gazette*, or purporting to be printed by the Queen's Printer :

(4.) The Acts of the Executive or the proceedings of the legislature of a foreign country—by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some public Act of the Governor-General of India in Council :

(5.) The proceedings of a municipal body in British India—by a copy of such proceedings certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body :

(6.) Public documents of any other class in a foreign country—by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a notary public or of a British consul or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

PRESUMPTIONS AS TO DOCUMENTS.

79. The Court shall presume every document purporting to be a certificate, certified copy, or other document, which is by law declared to be admissible as evidence of any particular fact, and which purports to be duly certified by any officer in British India or by any officer in any Native State in alliance with Her Majesty, who is duly authorised thereto by the Governor-General in Council, to be genuine : Provided that such document is substantially in the form, and purports to be executed in the manner, directed by law in that behalf. The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

80. Whenever any document is produced before any Court purporting to be a record or memorandum of the evidence or of any part of the evidence given by a witness in a judicial proceeding or before any officer authorised by law to take such evidence, or to be a statement or confession by any prisoner or accused person taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume that the document is genuine, that any statements as to the circumstances under which it was taken purporting to be made by the person signing it are true, and that such evidence, statement, or confession was duly taken.

81. The Court shall presume the genuineness of every document purporting to be the *London Gazette*, or the *Gazette of India*, or the Government Gazette of any Local Government, or of any colony, dependency, or possession of the British Crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament printed by the Queen's Printer, and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law, and is produced from proper custody.

82. When any document is produced before any Court purporting to be a document which, by the law in force for the time being in England or Ireland, would be admissible in proof of any particular in any Court of Justice in England or Ireland without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp, or signature is genuine, and that the person signing it held at the time when he signed it the judicial or official character which he claims, and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.

83. The Court shall presume that maps or plans purporting to be made by the authority of Government were so made and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate.

84. The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country, and of every book purporting to contain reports of decisions of the Courts of such country.

85. The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a notary public, or any Court, Judge, Magistrate, British Consul, or Vice-Consul, or representative of Her Majesty or of the Government of India, was so executed and authenticated.

86. The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of Her Majesty's dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of Her Majesty or of the Government of India resident in such country to be the manner commonly in use in that country for the certification of copies of judicial records.

87. The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts, and which is produced for its inspection, was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published.

88. The Court may presume that a message forwarded from a telegraph-office to the person to whom such message purports to be addressed corresponds with a message delivered for transmission at the office from which the message purports to be sent ; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

89. The Court shall presume that every document called for and not produced after notice to produce was attested, stamped, and executed in the manner required by law.

90. Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document which purports to be in the handwriting of any particular person is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation.—Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be ; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to section 81.

Illustrations.

(a.) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land showing his title to it. The custody is proper.

(b.) A produces deeds relating to landed property of which he is the mortgagee. The mortgagee is in possession. The custody is proper.

(c.) A, a connection of B, produces deeds relating to lands in B's possession, which were deposited with him by B for safe custody. The custody is proper.

CHAPTER VI.—OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE.

91. When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant, or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.—Wills admitted to probate in British India* may be proved by the probate.

Explanation 1.—This section applies equally to cases in which the contracts, grants, or dispositions of property referred to, are contained in one document, and to cases in which they are contained in more documents than one.

Explanation 2.—Where there are more originals than one, one original only need be proved.

Explanation 3.—The statement in any document whatever of a fact other than the facts referred to in this section shall not preclude the admission of oral evidence as to the same fact.

Illustrations.

(a.) If a contract be contained in several letters, all the letters in which it is contained must be proved.

(b.) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(c.) If a bill of exchange is drawn in a set of three, one only need be proved.

(d.) A contracts in writing with B for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion.

... Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

(e.) A gives B a receipt for money paid by B.

Oral evidence is offered of the payment.

The evidence is admissible.

92. When the terms of any such contract, grant, or other disposition of

Exclusion of evidence of property, or any matter required by law to be reduced oral agreement. to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument, or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

Proviso 1.—Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto, such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law.

Proviso 2.—The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso 3.—The existence of any separate oral agreement constituting a condition precedent to the attaching of any obligation under any such contract, grant, or disposition of property, may be proved.

Proviso 4.—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant, or disposition of property, may be proved, except in cases in which such contract, grant, or disposition of property, is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso 5.—Any usage or custom by which incidents, not expressly mentioned in any contract, are usually annexed to contracts of that description, may be proved: Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

* See Act XVIII of 1872, s. 7.

Proviso 6.—Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustrations.

(a.) A policy of insurance is effected on goods 'in ships from Calcutta to London.' The goods are shipped in a particular ship which is lost. The fact that that particular ship was orally excepted from the policy cannot be proved.

(b.) A agrees absolutely in writing to pay B Rs. 1,000 on the 1st March 1878. The fact that, at the same time, an oral agreement was made that the money should not be paid till the 31st March, cannot be proved.

(c.) An estate, called 'the Rámpur tea estate,' is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate, and was meant to pass by the deed, cannot be proved.

(d.) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

(e.) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(f.) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(g.) A sells B a horse, and verbally warrants him sound. A gives B a paper in these words, 'Bought of A a horse for Rs. 500.' B may prove the verbal warranty.

(h.) A hires lodgings of B, and gives B a card on which is written, 'Rooms, Rs. 200 a month.' A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year, and a regularly stamped agreement drawn up by an attorney is made between them. It is silent on the subject of board. A may not prove that board was included in the terms verbally.

(i.) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt, and does not send the money. In a suit for the amount, A may prove this.

(j.) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered.

93. Where the language used in a document is, on its face,

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| Exclusion of evidence to explain or amend ambiguous document. | ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects. |
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Illustrations.

(a.) A agrees in writing to sell a horse to B for 'Rs. 1,000 or Rs. 1,500.' Evidence cannot be given to show which price was to be given.

(b.) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

94. When language used in a document is plain in itself, and

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| Exclusion of evidence against application of document to existing facts. | when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts. |
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Illustration.

A sells to B by deed 'my estate at Rámpur containing 100 bighás.' A has an estate at Rámpur containing 100 bighás.

Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.

95. When language used in a document is plain in itself, but is

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| Evidence as to document in unmeaning reference to existing facts. | unmeaning in reference to existing facts, evidence may be given to show that it was used in a particular sense. |
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Illustration.

A sells to B by deed 'my house in Calcutta.'

A had no house in Calcutta, but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed.

These facts may be proved to show that the deed related to the house at Howrah.

96. When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

Illustrations.

(a.) A agrees to sell to B for Rs. 1,000 'my white horse.' A has two white horses. Evidence may be given of facts which show which of them was meant.

(b.) A agrees to accompany B to Haidarabad. Evidence may be given of facts showing whether Haidarabad in the Deekhan or Haidarabad in Sindh was meant.

Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies.

97. When the language used applies partly to one set of existing facts, and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

Illustration.

A agrees to sell to B 'my land at X' in the occupation of Y. A has land at X, but not in the occupation of Y, and he has land in the occupation of Y, but it is not at X. Evidence may be given of facts showing which he meant to sell.

98. Evidence may be given to show the meaning of illegible or Evidence as to meaning of not commonly intelligible characters, of foreign, obsolete, technical, local, and provincial expressions, of illegible characters, &c. abbreviations, and of words used in a peculiar sense.

Illustration.

A, a sculptor, agrees to sell to B 'all my models.' A has both models and modelling tools. Evidence may be given to show which he meant to sell.

99. Persons who are not parties to a document, or their Who may give evidence of agreement varying terms of document. representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document.

Illustration.

A and B make a contract in writing that B shall sell A certain cotton, to be paid for on delivery. At the same time they make an oral agreement that three months' credit shall be given to A. This could not be shown as between A and B, but it might be shown by C if it affected his interests.

100. Nothing in this chapter contained shall be taken to affect any of the provisions of the Indian Succession Act (X of 1865) as to the construction of wills.

Saving of provisions of Indian Succession Act relating to wills.

PART. III.

PRODUCTION AND EFFECT OF EVIDENCE.

CHAPTER VII.—OF THE BURDEN OF PROOF.

101. Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations.

(a.) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime.

(b.) A desires a Court to give judgment that he is entitled to certain land in the possession of B by reason of facts which he asserts and which B denies to be true.

A must prove the existence of those facts.

102. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Illustrations.

(a.) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father.

If no evidence were given on either side, B would be entitled to retain his possession.

Therefore the burden of proof is on A.

(b.) A sues B for money due on a bond.

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed, as the bond is not disputed, and the fraud is not proved.

Therefore the burden of proof is on B.

103. The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Illustration.

A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission.

B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

Burden of proving fact to be proved to make evidence admissible.

104. The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

Illustrations.

(a.) A wishes to prove a dying declaration by B. A must prove B's death.

(b.) A wishes to prove, by secondary evidence, the contents of a lost document. A must prove that the document has been lost.

105. When a person is accused of any offence, the burden of proving

Burden of proving that the existence of circumstances bringing the case case of accused comes within within any of the General Exceptions in the Indian exceptions.

Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

Illustrations.

(a.) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.

The burden of proof is on A.

(b.) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control.

The burden of proof is on A.

(c.) Section 325 of the Penal Code provides that whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be subject to certain punishments. A is charged with voluntarily causing grievous hurt under section 325.

The burden of proving the circumstances, bringing the case under section 335, lies on A.

Burden of proving fact especially within knowledge.

106. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations.

(a.) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b.) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

107. When the question is whether a man is alive or dead, and it is

Burden of proving death of person known to have been alive within thirty years. shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

108. Provided that when* the question is whether a man is alive or

Burden of proving that person is alive who has not been heard of for seven years. dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to* the person who affirms it.

109. When the question is whether persons are partners, landlord and

Burden of proof as to partnership, tenancy, and agency. tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it.

110. When the question is whether any person is owner of anything of

Burden of proof as to ownership. which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

111. Where there is a question as to the good faith of a transaction

Proof of good faith in transactions where one party is in relation of active confidence. between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

* See Act XVIII of 1872, s. 9.

Illustrations.

(a.) The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney.

(b.) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

112. The fact that any person was born during the continuance of a Birth during marriage con- valid marriage between his mother and any man, clusive proof of legitimacy. or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

113. A notification in the *Gazette of India* that any portion of British Proof of cession of terri- territory has been ceded to any Native State, Prince, tory. or Ruler,* shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification.

114. The Court may presume the existence of any fact which it thinks Court may presume exist- likely to have happened, regard being had to the ence of certain facts. common course of natural events, human conduct and public and private business in their relation to the facts of the particular case.

Illustrations.

The Court may presume—

(a.) That a man who is in possession of stolen goods soon after the theft is either the thief, or has received the goods knowing them to be stolen, unless he can account for his possession.

(b.) That an accomplice is unworthy of credit, unless he is corroborated in material particulars.

(c.) That a bill of exchange accepted or endorsed was accepted or endorsed for good consideration.

(d.) That a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or state of things usually cease to exist is still in existence.

(e.) That judicial and official acts have been regularly performed.

(f.) That the common course of business has been followed in particular cases.

(g.) That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it.

(h.) That if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him.

(i.) That when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

But the Court shall also have regard to such facts as the following in considering whether such maxims do or do not apply to the particular case before it:—

As to illustration a.—A shop-keeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business.

As to illustration b.—A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself.

As to illustration c.—A crime is committed by several persons. A, B, and C, three of the criminals, are captured on the spot, and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable.

As to illustration d.—A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was a young and ignorant person, completely under A's influence.

* See, for example, *Gazette of India*, Jan. 4, 1873, p. 2.

As to illustration *d*.—It is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course.

As to illustration *e*.—A judicial act, the regularity of which is in question, was performed under exceptional circumstances.

As to illustration *f*.—The question is whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances.

As to illustration *g*.—A man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family.

As to illustration *h*.—A man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked.

As to illustration *i*.—A bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

CHAPTER VIII.—ESTOPPEL.

115. When one person has, by his declaration, act, or omission, intentionally caused or permitted another person to believe a thing to be true, and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Estoppel.

Illustration.

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it.

The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.

116. No tenant of immoveable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immoveable property; and no person who came upon any immoveable property by the license of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such license was given.

Estoppel of tenant.

117. No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it; nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or license commenced, authority to make such bailment or grant such license.

Explanation 1.—The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Explanation 2.—If the bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

CHAPTER IX.—OF WITNESSES.

118. All persons shall be competent to testify, unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Who may testify.

Explanation.—A lunatic is not incompetent to testify unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

119. A witness, who is unable to speak, may give his evidence in any other manner in which he can make it intelligible,

Dumb witnesses. as by writing or by signs ; but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.

120. In all civil proceedings the parties to the suit, and the husband or Married person in civil and wife of any party to the suit, shall be competent criminal proceedings. witnessess. In criminal proceedings against any person the husband or wife of such person respectively shall be a competent witness.

121. No Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to any thing which came to his knowledge in Court as such Judge or Magistrate ; but he may be examined as to other matters which occurred in his presence whilst he was so acting.

Illustrations.

(a.) A, on his trial before the Court of Session, says that a deposition was improperly taken by B, the Magistrate. B cannot be compelled to answer questions as to this, except upon the special order of a superior Court.

(b.) A is accused before the Court of Session of having given false evidence before B, a Magistrate. B cannot be asked what A said, except upon the special order of the superior Court.

(c.) A is accused before the Court of Session of attempting to murder a police-officer whilst on his trial before B, a Sessions Judge. B may be examined as to what occurred.

122. No person, who is or has been married, shall be compelled to Communications during disclose any communication made to him during marriage by any person to whom he is or has been married ; nor shall he be permitted to disclose any such communication, unless the person who made it ~~or~~ his representative in interest consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

123. No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State. Evidence as to affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

124. No public officer shall be compelled to disclose communications Official communications. made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

125. No Magistrate or police-officer shall be compelled to say whence Information as to commis- he got any information as to the commission of any sion of offences. offence.

126. No barrister, attorney, pleader, or vakil, shall, at any time, be Professional communica- permitted, unless with his client's express consent, to tions. disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney, or vakil by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment.

Provided that nothing in this section shall protect from disclosure—

- (1.) Any such communication made in furtherance of any illegal* purpose ;
- (2.) Any fact observed by any barrister, pleader, attorney, or vakil in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister, pleader,* attorney, or vakil was or was not directed to such fact by or on behalf of his client.

Explanation.—The obligation stated in this section continues after the employment has ceased.

Illustrations.

(a.) A, a client, says to B, an attorney, 'I have committed forgery, and I wish you to defend me.'

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(b.) A, a client, says to B, an attorney, 'I wish to obtain possession of property by the use of a forged deed, on which I request you to sue.'

This communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

(c.) A, being charged with embezzlement, retains B, an attorney, to defend him. In the course of the proceedings B observes that an entry has been made in A's account-book charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment.'

This being a fact observed by B in the course of his employment showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

127. The provisions of section 126 shall apply to interpreters, and

Section 126 to apply to interpreters, &c. the clerks or servants of barristers, pleaders, attorneys, and vakils.

128. If any party to a suit gives evidence therein at his own instance or

Waiver of privilege if party volunteers evidence. otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 126 ; and if any party to a suit or proceeding calls any such barrister, pleader,* attorney, or vakil as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister, attorney, or vakil on matters which, but for such question, he would not be at liberty to disclose.

129. No one shall be compelled to disclose to the Court any con-

Confidential communications with legal advisers. fidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

130. No witness who is not a party to a suit shall be compelled to

Production of witness's title-deeds. produce his title-deeds to any property or any document in virtue of which he holds any property as pledgee or mortgagee, or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims.

131. No one shall be compelled to produce documents in his possession,

Production of documents which another person, having possession would be entitled to refuse to produce. which any other person would be entitled to refuse to produce, if they were in his possession, unless such last-mentioned person consents to their production.

* See Act XVIII of 1872, s. 10.

132. A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend, directly or indirectly, to criminate, such witness, or that it will expose, or tend directly or indirectly, to expose such witness to a penalty or forfeiture of any kind :

Provided that no such answer, which a witness shall be compelled to give shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

133. An accomplice shall be a competent witness against an accused person ; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

134. No particular number of witnesses shall in any case be required for the proof of any fact.

CHAPTER X.—OF THE EXAMINATION OF WITNESSES.

135. The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to Civil and Criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.

136. When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant ; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Illustrations.

(a.) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section thirty-two.

The fact that the person is dead must be proved by the person proposing to prove the statement before evidence is given of the statement.

(b.) It is proposed to prove by a copy the contents of a document said to be lost.

The fact that the original is lost must be proved by the person proposing to produce the copy before the copy is produced.

(c.) A is accused of receiving stolen property knowing it to have been stolen.

It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The Court may in its discretion either require the property to be identified before the denial of the possession is proved, or permit the denial of the possession to be proved before the property is identified.

(d.) It is proposed to prove a fact (A) which is said to have been the cause or effect of a fact in issue. There are several intermediate facts (B, C, and D) which must be shown to exist before the fact (A) can be regarded as the cause or effect of the fact in issue. The Court may either permit A to be proved before B, C, or D is proved, or may require proof of B, C and D before permitting proof of A.

Examination-in-chief.

137. The examination of a witness by the party who calls him shall be called his examination-in-chief.

Cross-examination.

The examination of a witness by the adverse party shall be called his cross-examination.

Re-examination.

The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.

138. Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party Direction of re-examination. calling him so desires) re-examined.

The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

The re-examination shall be directed to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

139. A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness.

Witnesses to character.

140. Witnesses to character may be cross-examined and re-examined.

141. Any question suggesting the answer which the person putting it wishes or expects to receive is called a leading question.

142. Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief or in a re-examination, except with the permission of the Court.

The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

When they may be asked.

143. Leading questions may be asked in cross-examination.

144. Any witness may be asked, whilst under examination, whether any Evidence as to matters in writing. contract, grant, or other disposition of property as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

Explanation.—A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

Illustration.

The question is whether A assaulted B.

C deposes that he heard A say to D, 'B wrote a letter accusing me of theft, and I will be revenged on him.' This statement is relevant, as showing A's motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

145. A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, and relevant to matters in question without such writing being shown to him, or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

146. When a witness is cross-examined, he may, in addition to the Questions lawful in cross-examination. questions hereinbefore referred to, be asked any questions which tend—

(1) to test his veracity ;

(2) to discover who he is, and what is his position in life ; or

(3) to shake his credit by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him, or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

147. If any such question relates to a matter relevant to the suit or proceeding, the provisions of section 132 shall apply thereto.

148. If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion, the Court shall have regard to the following considerations :—

(1.) Such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies.

(2.) Such questions are improper if the imputation which they convey relates to matters so remote in time or of such a character that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies.

(3.) Such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence.

(4.) The Court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer, if given, would be unfavourable.

149. No such question as is referred to in section 148 ought to be asked unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well-founded.

Illustrations.

(a.) A barrister is instructed by an attorney or vakil that an important witness is a dākdūt. This is a reasonable ground for asking the witness whether he is a dākdūt.

(b.) A pleader is informed by a person in Court that an important witness is a dākdūt. The informant, on being questioned by the pleader, gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a dākdūt.

(c.) A witness, of whom nothing whatever is known, is asked at random whether he is a dākdūt. There are here no reasonable grounds for the question.

(d.) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living, gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a dākdūt.

150. If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any barrister, pleader, vakil, or attorney, report the circumstances of the case to the High Court or other authority to which such barrister, pleader, vakil, or attorney is subject in the exercise of his profession.

151. The Court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

152. The Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

153. When a witness has been asked, and has answered, any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but if he answers falsely, he may afterwards be charged with giving false evidence.

Exception 1.—If a witness is asked whether he has been previously convicted of any crime, and denies it, evidence may be given of his previous conviction.

Exception 2.—If a witness is asked any question tending to impeach his impartiality, and answers it by denying the facts suggested, he may be contradicted.

Illustrations.

(a.) A claim against an underwriter is resisted on the ground of fraud.

The claimant is asked whether, in a former transaction, he had not made a fraudulent claim. He denies it.

Evidence is offered to show that he did make such a claim.

The evidence is inadmissible.

(b.) A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it.

Evidence is offered to show that he was dismissed for dishonesty.

The evidence is not admissible.

(c.) A affirms that on a certain day he saw B at Lahore.

A is asked whether he himself was not on that day at Calcutta. He denies it.

Evidence is offered to show that A was on that day at Calcutta.

The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Lahore.

In each of these cases the witness might, if his denial was false, be charged with giving false evidence.

(d.) A is asked whether his family has not had a blood-feud with the family of B, against whom he gives evidence.

He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

154. The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

155. The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him :—

(1.) By the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit.

(2.) By proof that the witness has been bribed or has accepted* the offer of a bribe, or has received any other corrupt inducement to give his evidence.

(3.) By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted.

(4.) When a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

Explanation—A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

Illustrations.

(a.) A sues B for the price of goods sold and delivered to B. C says that he delivered the goods to B.

Evidence is offered to show that, on a previous occasion, he said that he had not delivered the goods to B.

The evidence is admissible.

(b.) A is indicted for the murder of B.

C says that B, when dying, declared that A had given B the wound of which he died.

Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence.

The evidence is admissible.

156. When a witness whom it is intended to corroborate gives evidence

Questions tending to corroborate evidence of relevant fact admissible.

of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

Illustration.

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

157. In order to corroborate the testimony of a witness, any former

Former statements of witness may be proved to corroborate later testimony as to same fact.

statement made by such witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

158. Whenever any statement, relevant under section 32 or 33, is proved,

What matters may be proved in connection with proved statement relevant under section 32 or 33.

all matters may be proved either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had

been called as a witness, and had denied upon cross-examination the truth of the matter suggested.

159. A witness may, while under examination, refresh his memory by

Refreshing memory.

referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.

* See Act XVIII of 1872, s. 11.

The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct.

Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document: Provided that the Court be satisfied that there is sufficient reason for the non-production of the original.

An expert may refresh his memory by reference to professional treatises.

160. A witness may also testify to facts mentioned in any such document as is mentioned in section 159, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

Testimony to facts stated in document mentioned in section 159.

Illustration.

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business if he knows that the books were correctly kept, although he has forgotten the particular transactions entered.

161. Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party if he requires it; such party may, if he pleases, cross-examine the witness thereupon.

162. A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court.

The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence; and if the interpreter disobeys such direction, he shall be held to have committed an offence under section one hundred and sixty-six of the Indian Penal Code.

163. When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.

164. When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the Court.

Using, as evidence, of document production of which was refused on notice.

Illustration.

A sues B on an agreement, and gives B notice to produce it. At the trial, A calls for the document, and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped. He cannot do so.

165. The Judge may, in order to discover or to obtain proper proof of Judge's power to put ques- relevant facts, ask any question he pleases in any tions or order production. form at any time of any witness or of the parties about any fact relevant or irrelevant, and may order the production of any document or thing ; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, cross-examine any witness upon any answer given in reply to any such question :

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided also that this section shall not authorize any Judge to compel any witness to answer any question or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party ; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149 ; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

166. In cases tried by jury or with assessors, the jury or assessors may put any questions to the witnesses, through or by leave of the Judge, which the Judge himself might put, and which he considers proper.

Power of jury or assessors to put questions.

CHAPTER XI.—OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE.

167. The improper admission or rejection of evidence shall not be ground No new trial for rejection of itself for a new trial or reversal of any decision in or improper admission of evidence. any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to testify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

SCHEDULE.

ENACTMENTS REPEALED.

| Number and year. | Title. | Extent of repeal. |
|---------------------------------|---|--|
| Stat. 26 Geo. III, cap. 57. | For the further regulation of the trial of persons accused of certain offences committed in the East Indies ; for repealing so much of an Act, made in the twenty-fourth year of the reign of his present Majesty (intituled, An Act for the better regulation and management of the affairs of the East India Company, and of the British possessions in India, and for establishing a Court of judicature for the more speedy and effectual trial of persons accused of offences committed in the East Indies), as requires the servants of the East India Company to deliver inventories of their estates and effects ; for rendering the laws more effectual against persons unlawfully resorting to the East Indies ; and for the more easy proof, in certain cases, of deeds and writings executed in Great Britain or India. | Section thirty-eight so far as it relates to Courts of Justice in the East Indies. |
| Stat. 14 & 15 Vic., cap. 99. | To amend the Law of Evidence. | Section eleven and so much of section nineteen as relates to British India. |
| Act XV of 1852 | To amend the Law of Evidence. | So much as has not been heretofore repealed. |
| Act XIX of 1853 | To amend the Law of Evidence in the Civil Courts of the East India Company in the Bengal Presidency. | Section nineteen. |
| Act II of 1855 | For the further improvement of the Law of Evidence. | So much as has not been heretofore repealed. |
| Act XXV of 1861 | For simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter. | Section two hundred and thirty-seven. |
| Act I of 1868 | The General Clauses Act, 1868. | Sections seven and eight. |

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THE INDIAN CONTRACT ACT.

No. IX. OF 1872.

[Received the Governor-General's assent on the 25th April 1872.]

Preamble. WHEREAS it is expedient to define and amend certain parts of the law relating to contracts; It is hereby enacted as follows:—

PRELIMINARY.

Short title.

1. This Act may be called "The Indian Contract Act, 1872."

Extent.

It extends to the whole of British India, and it shall come into force on the first day of September 1872.*

Commencement.

The enactments mentioned in the schedule hereto are repealed to the extent specified in the third column thereof; but nothing herein contained shall affect the provisions of any Statute, Act,† or Regulation not hereby expressly repealed, nor any usage or custom of trade, nor any incident of any contract, not inconsistent with the provisions of this Act.

Enactments repealed.

2. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:—

Interpretation-clause.

(a.)—When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal:

"Proposal."

(b.)—When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted,‡ becomes a promise:

"Promise."

(c.)—The person making the proposal is called the 'promisor,' and the person accepting the proposal is called the 'promisee':

"Promisor" and "Promisee."

(d.)—When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise:

"Consideration."

(e.)—Every promise and every set of promises, forming the consideration for each other, is an agreement:

"Agreement."

* It is not retrospective, see 12 Beng. 472.

† See, for instance, Act XVIII. of 1854, s. 12.

‡ But see s. 4, ill. 6.

THE INDIAN CONTRACT ACT.

"Reciprocal promises."

(f.)—Promises which form the consideration or part of the consideration for each other are called reciprocal promises :

"Void agreement."

(g.)—An agreement not enforceable by law is said to be void :

"Contract."

(h.)—An agreement enforceable by law is a contract :

(i.)—An agreement

which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract :

"Voidable contract."

(j.)—A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

"Void contract."

CHAPTER I.

OF THE COMMUNICATION, ACCEPTANCE, AND REVOCATION OF PROPOSALS.

3. The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances respectively, are deemed to be made by any act or omission of the party proposing, accepting, or revoking, by which he intends to communicate such proposal, acceptance, or revocation, or which has the effect of communicating it.

Communication when complete.

4. The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

The communication of an acceptance is complete,
as against the proposer, when it is put in a course of transmission to him,
so as to be out of the power of the acceptor ;
as against the acceptor, when it comes to the knowledge of the proposer.
The communication of a revocation is complete,
as against the person to whom it is made, so as to be out of the power of the person who makes it ;
as against the person to whom it is made, when it comes to his knowledge.

Illustrations.

- (a.) A proposes, by letter, to sell a house to B at a certain price.
The communication of the proposal is complete when B receives the letter.
(b.) B accepts A's proposal by a letter sent by post.
The communication of the acceptance is complete,
as against A when the letter is posted ;
as against B when the letter is received by A.
(c.) A revokes his proposal by telegram.
The revocation is complete as against A when the telegram is despatched. It is complete as against B when B receives it.
B revokes his acceptance by telegram. B's revocation is complete as against B when the telegram is despatched, and as against A when it reaches him.

5. A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

Revocation of proposals and acceptances.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards. •

Illustration.

A proposes, by a letter sent by post, to sell his house to B.

B accepts the proposal by a letter sent by post.

A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards.

B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards.

Revocation how made.

6. A proposal is revoked—

- (1) by the communication of notice of revocation by the proposer to the other party ;
- (2) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance ;
- (3) by the failure of the acceptor to fulfil a condition precedent to acceptance ; or
- (4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance. •

Acceptance must be absolute.

7. In order to convert a proposal into a promise the acceptance must—

- (1) be absolute and unqualified ;
- (2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise ; but, if he fails to do so, he accepts the acceptance. •

Acceptance by performing conditions or receiving consideration.

8. Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

9. In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

CHAPTER II.

OF CONTRACTS, VOIDABLE CONTRACTS, AND VOID AGREEMENTS.

10. All agreements are contracts* if they are made by the free consent of parties competent to contract, for a lawful consideration,† and with a lawful object, and are not hereby expressly declared to be void.

* See s. 2, cl. h.

† See s. 25, expl. 2, and s. 102.

Nothing herein contained shall affect any law in force in British India, and not hereby expressly repealed, by which any contract is required to be made in writing* or in the presence of witnesses, or any law relating to the registration of documents.

11. Every person is competent to contract who is of the age of majority Who are competent to according to the law to which he is subject,† and who contract. is of sound mind, and is not disqualified from contracting by any law to which he is subject.

12. A person is said to be of sound mind for the purpose of making a What is a sound mind for contract if, at the time when he makes it, he is capable the purposes of contracting. of understanding it, and of forming a rational judgment as to its effect upon his interests.

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.‡

Illustrations.

(a.) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

(b.) A sane man, who is delirious from fever, or who is so drunk that he cannot understand the terms of a contract, or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

13. Two or more persons are said to consent when they agree upon the "Consent" defined. same thing in the same sense.

14. Consent is said to be free when it is not "Free consent" defined. caused by—

- (1) coercion, as defined in section fifteen, or
- (2) undue influence, as defined in section sixteen, or
- (3) fraud, as defined in section seventeen, or
- (4) misrepresentation, as defined in section eighteen, or,
- (5) mistake, subject to the provisions of sections twenty, twenty-one, and twenty-two.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation, or mistake.

15. Coercion is the committing, or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful "Coercion" defined. detaining, or threatening to detain, any property to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Explanation.—It is immaterial whether the Indian Penal Code is or is not in force in the place where the coercion is employed.

* See s. 25, *infra*, and Act VI of 1840, s. 2 (acceptances of bills); Act XX of 1847, s. 5 (assignment of copy-right); Act XXXI of 1854, ss. 14 and 18 (conveyances of interests in immoveable property in cases to which English law is applicable); 17 and 18 Vic., c. 104, s. 55 (transfers of registered ships or shares therein); Act X of 1866, ss. 6, 16, 23, 42 (memorandum of association, articles of association, transfer of shares, contracts on behalf of company); Act XI of 1876, s. 9 (contracts on behalf of Presidency banks); and various local Acts, e.g., the Oudh Rent Act (XIX of 1868), ss. 36, 48, 116; the Madras Rent Act (VIII of 1865), s. 7; and the Municipal Acts, IV of 1873, s. 18; XI of 1873, s. 18; XV of 1873, s. 13; VII of 1874, s. 31; Bengal Act, IV of 1876, s. 54; Madras Act IX of 1867, s. 4; and Bombay Act III of 1872, s. 54.

† See Act IX of 1875.

‡ But see s. 68, *infra*.

Illustration.

A, on board an English ship on the high seas, causes B to enter into an agreement by an act amounting to criminal intimidation under the Indian Penal Code.

A afterwards sues B for breach of contract at Calcutta.

A has employed coercion, although his act is not an offence by the law of England, and although section 506 of the Indian Penal Code was not in force at the time when or place where the act was done.

“Undue influence” defined.

16. Undue influence is said to be employed in the following cases :—

(1.)—When a person in whom confidence is reposed by another, or who holds a real or apparent authority over that other, makes use of such confidence or authority for the purpose of obtaining an advantage over that other which, but for such confidence or authority, he could not have obtained :

(2.)—When a person whose mind is enfeebled by old age, illness, or mental or bodily distress, is so treated as to make him consent to that, to which, but for such treatment, he would not have consented, although such treatment may not amount to coercion.

17. Fraud means and includes any of the following acts committed by a party to a contract,* or with his connivance, or by his

“Fraud” defined.

agent,† with intent to deceive another party thereto

or his agent, or to induce him to enter into the contract: *—

(1.)—The suggestion, as a fact, of that which is not true, by one who does not believe it to be true.

(2.)—The active concealment of a fact by one having knowledge or belief of the fact.

(3.)—A promise made without any intention of performing it.

(4.)—Any other act fitted to deceive.

(5.)—Any such act or omission as the law specially declares to be fraudulent.

Explanation.—Mere silence as to facts likely to affect the willingness of a person to enter into a contract* is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak;‡ or unless his silence is in itself equivalent to speech.

Illustrations.

(a.) A sells by auction to B a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud in A.

(b.) B is A's daughter, and has just come of age. Here the relation between the parties would make it A's duty to tell B if the horse is unsound.

(c.) B says to A, “If you do not deny it, I shall assume that the horse is sound.” A says nothing. Here A's silence is equivalent to speech.

(d.) A and B, being traders, enter upon a contract.* A has private information of a change in prices which would affect B's willingness to proceed with the contract.* A is not bound to inform B.

“Misrepresentation” defined.

18 Misrepresentation means and includes—

(1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true ;

* Read agreement.

† Compare s. 238, *infra*.

‡ See s. 143, *infra*.

(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him;

(3) causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

19. When consent to an agreement is caused by coercion, undue influence, fraud, or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

Voidability of agreements without free consent.

A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

Exception.—If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section seventeen, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

Explanation.—A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.

Illustrations.

(a.) A, intending to deceive B, falsely represents that five hundred maunds of indigo are made annually at A's factory, and thereby induces B to buy the factory. The contract is voidable at the option of B.

(b.) A, by a misrepresentation, leads B erroneously to believe that five hundred maunds of indigo are made annually at A's factory. B examines the accounts of the factory, which show that only four hundred maunds of indigo have been made. After this B buys the factory. The contract is not voidable on account of A's misrepresentation.

(c.) A fraudulently informs B that A's estate is free from incumbrance. B thereupon buys the estate. The estate is subject to a mortgage. B may either avoid the contract, or may insist on its being carried out, and the mortgage debt redeemed.*

(d.) B, having discovered a vein of ore on the estate of A, adopts means to conceal, and does conceal, the existence of the ore from A. Through A's ignorance B is enabled to buy the estate at an under value. The contract is voidable at the option of A.

(e.) A is entitled to succeed to an estate at the death of B; B dies; C, having received intelligence of B's death, prevents the intelligence reaching A, and thus induces A to sell him his interest in the estate. The sale is voidable at the option of A.

Agreement void where both parties are under mistake as to matter of fact.

20. Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

Explanation.—An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement is not to be deemed a mistake as to a matter of fact.

Illustrations.

(a.) A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Bombay. It turns out that, before the day of the bargain, the ship conveying the cargo had been cast away, and the goods lost. Neither party was aware of these facts. The agreement is void.

(b.) A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

(c.) A, being entitled to an estate for the life of B, agrees to sell it to C. B was dead at the time of the agreement, but both parties were ignorant of the fact. The agreement is void.

* Read 'paid off' or 'discharged.'

21. A contract is not voidable because it was caused by a mistake as to any law in force in British India; but a mistake as to a law not in force in British India has the same effect as a mistake of fact.

Illustrations.

A and B make a contract grounded on the erroneous belief that a particular debt is barred by the Indian Law of Limitation. The contract is not voidable.

A and B make a contract grounded on an erroneous belief as to the law regulating bills of exchange in France. The contract is voidable.

Contract not voidable merely because of mistake of one party as to matter of fact.

22. A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.

What considerations and objects are lawful, and what not.

23. The consideration or object of an agreement is lawful, unless—

it is forbidden by law;* or
is of such a nature that, if permitted, it would defeat the provisions of any law; or
is fraudulent; or
involves or implies injury to the person or property of another; or
the Court regards it as immoral† or opposed to public policy.‡

In each of these cases the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

Illustrations.

(a.) A agrees to sell his house to B for 10,000 rupees. Here B's promise to pay the sum of 10,000 rupees is the consideration for A's promise to sell the house, and A's promise to sell the house is the consideration for B's promise to pay the 10,000 rupees. These are lawful considerations.

(b.) A promises to pay B 1,000 rupees at the end of six months, if C, who owes that sum to B, fails to pay it. B promises to grant time to C accordingly. Here the promise of each party is the consideration for the promise of the other party, and they are lawful considerations.

(c.) A promises, for a certain sum paid to him by B, to make good to B the value of his ship if it is wrecked on a certain voyage. Here A's promise is the consideration for B's payment, and B's payment is the consideration for A's promise, and these are lawful considerations.

(d.) A promises to maintain B's child, and B promises to pay A 1,000 rupees yearly for the purpose. Here the promise of each party is the consideration for the promise of the other party. They are lawful considerations.

(e.) A, B, and C enter into an agreement for the division among them of gains acquired, or to be acquired, by them by fraud. The agreement is void, as its object is unlawful.

(f.) A promises to obtain for B an employment in the public service, and B promises to pay 1,000 rupees to A. The agreement is void, as the consideration for it is unlawful.

(g.) A, being agent for a landed proprietor, agrees for money, without the knowledge of his principal, to obtain for B a lease of land belonging to his principal. The agreement between A and B is void, as it implies a fraud by concealment by A on his principal.

(h.) A promises B to drop a prosecution which he has instituted against B for robbery, and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful.

(i.) A's estate is sold for arrears of revenue under the provisions of an Act of the legislature by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser, and agrees to convey the estate to A upon receiving from him the price which B has paid. The agreement is void, as it renders the transaction in effect a purchase by the defaulter, and would so defeat the object of the law.

* See *infra*, ss. 26, 27, 28, 30.

† See 9 Beng. ap. 37.

‡ See 4 Beng. O. C. J.; 9 Beng. ap. 38; 11 Beng. 129.

(j.) A, who is B's mukhtár, promises to exercise his influence, as such, with B in favour of C, and C promises to pay 1,000 rupees to A. The agreement is void, because it is immoral.

(k.) A agrees to let her daughter to hire to B for concubinage. The agreement is void, because it is immoral, though the letting may not be punishable under the Indian Penal Code.

VOID AGREEMENTS.

24. If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.

Agreements void if considerations and objects unlawful in part.

Illustration.

A promises to superintend, on behalf of B, a legal manufacture of indigo and an illegal traffic in other articles. B promises to pay A a salary of 10,000 rupees a year. The agreement is void, the object of A's promise, and the consideration for B's promise, being in part unlawful.

Agreement without consideration void, unless—

25. An agreement made without consideration is void, unless—

(1) it is expressed in writing, and registered under the law for the time being in force for the registration of assurances, and is made on account of natural love and affection between parties standing in a near relation to each other; or unless

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or is a promise to compensate for something done, or something which the promisor was legally compellable to do; or unless

(3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorised in that behalf, to pay, wholly or in part, a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases such an agreement is a contract.

Explanation 1.—Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation 2.—An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

Illustrations.

(a.) A promises for no consideration to give to B Rs. 1,000. This is a void agreement.

(b.) A, for natural love and affection, promises to give his son, B, Rs. 1,000. A puts his promise to B into writing, and registers it. This is a contract.

(c.) A finds B's purse, and gives it to him. B promises to give A Rs. 50. This is a contract.

(d.) A supports B's infant son. B promises to pay A's expenses in so doing. This is a contract.

(e.) A owes B Rs. 1,000, but the debt is barred by the Limitation Act. A signs a written promise to pay B Rs. 500 on account of the debt. This is a contract.

(f.) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A's consent to the agreement was freely given. The agreement is a contract, notwithstanding the inadequacy of the consideration.

(g.) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A denies that his consent to the agreement was freely given. The inadequacy of the consideration is a fact which the Court should take into account in considering whether or not A's consent was freely given.

Agreement in restraint of marriage void.

26. Every agreement in restraint of the marriage of any person, other than a minor,* is void.

27. Every agreement by which any one is restrained from exercising a lawful profession,* trade, or business of any kind, is to that extent void.

Exception 1.—One who sells the good-will of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the good-will from him, carries on a like business therein, provided that such limits appear to the Court reasonable, regard being had to the nature of the business.

Exception 2.—Partners may, upon or in anticipation of a dissolution of partnership, agree that some or all of them will not carry on a business similar to that of the partnership within such local limits as are referred to in the last preceding exception.

Exception 3.—Partners may agree that some one or all of them will not carry on any business other than that of the partnership during the continuance of the partnership.

28. Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent.

Exception 1.—This section shall not render illegal a contract by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

Exception 2.—Nor shall this section render illegal any contract in writing by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.

Agreements void for uncertainty.

29. Agreements, the meaning of which is not certain, or of which the subject-matter is not certain, are void.

Illustrations.

(a.) A agrees to sell to B 'a hundred tons of oil.' There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.

(b.) A agrees to sell to B one hundred tons of oil of a specified description known as an article of commerce. There is no uncertainty here to make the agreement void.

* During his or her minority, as to which see Act IX of 1875.

† These words "do not mean an absolute restriction, and are intended to apply to a partial restriction, a restriction limited to some particular place," per Conch. C. J., 14 Beng. 85.

** Repealed by the Specific Relief Act (I of 1877).

(f.) A agrees to sell to B 'my white horse for rupees five hundred or rupees one thousand.' There is nothing to show which of the two prices was to be given. The agreement is void.

Nothing in this section shall be deemed to legalize any transaction connected with horse-racing, to which the provisions of section 294A of the Indian Penal Code not to be affected. section 294A of the Indian Penal Code apply.

OF CONTINGENT CONTRACTS.

Illustration.

If the event becomes impossible, such contracts become void.

Illustrations.

33. Contingent contracts to do or not to do anything if an uncertain future event does not happen can be enforced when the happening of that event becomes impossible, and not before.

Illustration.

A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks.

- 34.** If the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.

When event on which contract is contingent to be deemed impossible if it is the future conduct of a living person.

Illustration.

A agrees to pay B a sum of money if B marries C. C marries D. The marriage of B to C must now be considered impossible, although it is possible that D may die, and that C may afterwards marry B.

- 35.** Contingent contracts to do or not to do anything if a specified uncertain event happens within a fixed time become void if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.

When contracts become void which are contingent on happening of specified event within fixed time.

Contingent contracts to do or not to do anything, if a specified uncertain event does not happen within a fixed time, may be enforced by law when the time fixed has expired, and such event has not happened, or, before the time fixed has expired, if it becomes certain that such event will not happen.

When contracts may be enforced which are contingent on specified event not happening within fixed time.

Illustrations.

(a.) A promises to pay B a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within the year; and becomes void if the ship is burnt within the year.

(b.) A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year.

- 36.** Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

Agreements contingent on impossible events void.

Illustrations.

(a.) A agrees to pay B 1,000 rupees if two straight lines should enclose a space. The agreement is void.

(b.) A agrees to pay B 1,000 rupees if B will marry A's daughter C. C was dead at the time of the agreement. The agreement is void.

CHAPTER IV.

OF THE PERFORMANCE OF CONTRACTS.

CONTRACTS WHICH MUST BE PERFORMED.

- 37.** The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

Obligation of parties to contracts.

Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract.

Illustrations.

(a.) A promises to deliver goods to B on a certain day on payment of Rs. 1,000. A dies before that day. A's representatives are bound to deliver the goods to B, and B is bound to pay the Rs. 1,000 to A's representatives.

(b.) A promises to paint a picture for B by a certain day at a certain price. A dies before the day. The contract cannot be enforced either by A's representatives or by B.

38. Where a promisor has made an offer of performance to the promisee,

Effect of refusal to accept and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract.

Every such offer must fulfil the following conditions :—

(1.) It must be unconditional.

(2.) It must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do.

(3.) If the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.

An offer to one of several joint promisees has the same legal consequences as an offer to all of them.

Illustration.

A contracts to deliver to B at his warehouse, on the 1st March 1873, 100 bales of cotton of a particular quality. In order to make an offer of performance with the effect stated in this section, A must bring the cotton to B's warehouse, on the appointed day, under such circumstances that B may have a reasonable opportunity of satisfying himself that the thing offered is cotton of the quality contracted for, and that there are 100 bales.

39. When a party to a contract has refused to perform, or disabled

Effect of refusal of party himself from performing, his promise in its entirety, to perform promise wholly. the promisee may put an end to the contract,* unless he has signified, by words or conduct, his acquiescence in its continuance.

Illustrations.

(a.) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night A wilfully absents herself from the theatre. B is at liberty to put an end to the contract.

(b.) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her at the rate of 100 rupees for each night. On the sixth night A wilfully absents herself. With the assent of B, A sings on the seventh night. B has signified his acquiescence in the continuance of the contract, and cannot now put an end to it, but is entitled to compensation for the damage sustained by him through A's failure to sing on the sixth night.

BY WHOM CONTRACTS MUST BE PERFORMED.

40. If it appears from the nature of the case that it was the intention

Person by whom promise of the parties to any contract that any promise is to be performed. contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it.

* And see s. 75, *infra*.

Illustrations.

(a.) A promises to pay B a sum of money. A may perform this promise, either by personally paying the money to B, or by causing it to be paid to B by another; and if A dies before the time appointed for payment, his representatives must perform the promise, or employ some proper person to do so.

(b.) A promises to paint a picture for B. A must perform this promise personally.

Effect of accepting performance from third person.

41. When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

42. When two or more persons have made a joint promise, then (unless a contrary intention appears by the contract) all such persons, during their joint lives, and, after the death of any of them, his representative jointly with the survivor or survivors, and, after the death of the last survivor, the representatives of all jointly, must fulfil the promise.

43. When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one of such joint promisors to perform the whole of the promise.

Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

Explanation.—Nothing in this section shall prevent a surety from recovering from his principal payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payments made by the principal.

Illustrations.

(a.) A, B, and C, jointly promise to pay D 3,000 rupees. D may compel either A or B or C to pay him 3,000 rupees.

(b.) A, B, and C, jointly promise to pay D the sum of 3,000 rupees. C is compelled to pay the whole. A is insolvent, but his assets are sufficient to pay one-half of his debts. C is entitled to receive 500 rupees from A's estate, and 1,250 rupees from B.

(c.) A, B, and C, are under a joint promise to pay D 3,000 rupees. C is unable to pay anything, and A is compelled to pay the whole. A is entitled to receive 1,500 rupees from B.

(d.) A, B, and C, are under a joint promise to pay D 3,000 rupees, A and B being only sureties for C. C fails to pay. A and B are compelled to pay the whole sum. They are entitled to recover it from C.

44. Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors; neither does it free the joint promisor so released from responsibility to the other joint promisor or joint promisors.*

45. When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with

* See s. 133, *infra*.

them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly.

Illustration.

A, in consideration of 5,000 rupees lent to him by B and C, promises B and C jointly to repay them that sum with interest on a day specified. B dies. The right to claim performance rests with B's representative jointly with C during C's life, and, after the death of C, with the representatives of B and C jointly.

TIME AND PLACE FOR PERFORMANCE.

Time for performance of promise where no application is to be made, and no time is specified.

46. Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.

Explanation.—The question, 'What is a reasonable time?' is, in each particular case, a question of fact.

47. When a promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.

Time and place for performance of promise on certain day, and no application to be made.

Illustration.

A promises to deliver goods at B's warehouse on the 1st January. On that day A brings the goods to B's warehouse, but after the usual hour for closing it, and they are not received. A has not performed his promise.

48. When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business.

Explanation.—The question, 'What is a proper time and place?' is, in each particular case, a question of fact.

49. When a promise is to be performed without application by the promisee, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such place.

Place for performance of promise where no application to be made and no place fixed for performance.

Illustration.

A undertakes to deliver a thousand maunds of jute to B on a fixed day. A must apply to B to appoint a reasonable place for the purpose of receiving it, and must deliver it to him at such place.

Performance in manner or at time prescribed or sanctioned by promisee.

50. The performance of any promise may be made in any manner or at any time which the promisee prescribes or sanctions.

Illustrations.

(a.) B owes A 2,000 rupees. A desires B to pay the amount to A's account with C, a banker. B, who also banks with C, orders the amount to be transferred from his account to A's credit, and this is done by C. Afterwards, and before A knows of the transfer, C fails. There has been a good payment by B.

(b.) A and B are mutually indebted. A and B settle an account by setting off one item against another, and B pays A the balance found* to be due from him upon such settlement.

This amounts to a payment by A and B, respectively, of the sums which they owed to each other.

(c.) A owes B 2,000 rupees. B accepts some of A's goods in reduction of the debt. The delivery of the goods operates as a part-payment.

(d.) A desires B, who owes him Rs. 100, to send him a note for Rs. 100 by post. The debt is discharged as soon as B puts into the post a letter containing the note duly addressed to A.

PERFORMANCE OF RECIPROCAL PROMISES.

Promisor not bound to perform unless reciprocal promisee ready and willing to perform

51. When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

Illustrations.

(a.) A and B contract that A shall deliver goods to B to be paid for by B on delivery. A need not deliver the goods, unless B is ready and willing to pay for the goods on delivery.

B need not pay for the goods, unless A is ready and willing to deliver them on payment.

(b.) A and B contract that A shall deliver goods to B at a price to be paid by instalments, the first instalment to be paid on delivery.

A need not deliver, unless B is ready and willing to pay the first instalment on delivery.

B need not pay the first instalment, unless A is ready and willing to deliver the goods on payment of the first instalment.

52. Where the order, in which reciprocal promises are to be performed, is

Order of performance of expressly fixed by the contract, they shall be performed in that order; and where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.

Illustrations.

(a.) A and B contract that A shall build a house for B at a fixed price. A's promise to build the house must be performed before B's promise to pay for it.

(b.) A and B contract that A shall make over his stock-in-trade to B at a fixed price, and B promises to give security for the payment of the money. A's promise need not be performed until the security is given, for the nature of the transaction requires that A should have security before he delivers up his stock.

53. When a contract contains reciprocal promises, and one party to the

Liability of party prevented by event on which contract is to take effect. contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation* from the other party for any loss which he may sustain in consequence of the non-performance of the contract.

Illustration.

A and B contract that B shall execute certain work for A for a thousand rupees. B is ready and willing to execute the work accordingly, but A prevents him from doing so. The contract is voidable at the option of B; and, if he elects to rescind it, he is entitled to recover from A compensation for any loss which he has incurred by its non-performance.

* See s. 73, *infra*.

54. When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance

Effect of default as to that promise which should be first performed in contract consisting of reciprocal promises.

cannot be claimed, till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract.

Illustrations.

(a.) A hires B's ship to take in and convey from Calcutta to the Mauritius a cargo to be provided by A, B receiving a certain freight for its conveyance. A does not provide any cargo for the ship. A cannot claim the performance of B's promise, and must make compensation to B for the loss which B sustains by the non-performance of the contract.

(b.) A contracts with B to execute certain builders' work for a fixed price, B supplying the scaffolding and timber necessary for the work. B refuses to furnish any scaffolding or timber, and the work cannot be executed. A need not execute the work, and B is bound to make compensation to A for any loss caused to him by the non-performance of the contract.

(c.) A contracts with B to deliver to him at a specified price certain merchandise on board a ship which cannot arrive for a month, and B engages to pay for the merchandise within a week from the date of the contract. B does not pay within the week. A's promise to deliver need not be performed, and B must make compensation.

(d.) A promises B to sell him one hundred bales of merchandise to be delivered next day, and B promises A to pay for them within a month. A does not deliver according to his promise. B's promise to pay need not be performed, and A must make compensation.

55. When a party to a contract promises to do a certain thing at or

Effect of failure to perform at fixed time on contract in which time is essential.

before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable, at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.

If it was not the intention of the parties that time should be of the essence

Effect of such failure when of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time ; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

able by the failure to do such thing at or before the specified time ; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

If, in case of a contract, voidable on account of the promisor's failure to

Effect of acceptance of performance at time other than that agreed upon.

perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so.*

Agreement to do impossible act void.

56. An agreement to do an act impossible in itself is void.

A contract to do an act which, after the contract is made, becomes impossible,† or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.‡

* Compare ss. 62 and 63, *infra*.

† Otherwise than by the default of the contractor.

‡ But see s. 65, *infra*.

Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

Illustrations.

- (a.) A agrees with B to discover treasure by magic. The agreement is void.
- (b.) A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void.
- (c.) A contracts to marry B, being already married to C, and being forbidden by the law to which he is subject to practise polygamy. A must make compensation to B for the loss caused to her by the non-performance of his promise.
- (d.) A contracts to take in cargo for B at a foreign port. A's Government afterwards declares war against the country in which the port is situated. The contract becomes void when war is declared.
- (e.) A contracts to act at a theatre for six months in consideration of a sum paid in advance by B. On several occasions A is too ill to act. The contract to act on those occasions becomes void.

57. Where persons reciprocally promise, firstly to do certain things which are legal, and, secondly, under specified circumstances, to do certain other things which are illegal, the first set of promises is a contract, but the second is a void agreement.

Illustration.

A and B agree that A shall sell B a house for 10,000 rupees, but that, if B uses it as a gambling-house, he shall pay A 50,000 rupees for it.

The first set of reciprocal promises, namely, to sell the house and to pay 10,000 rupees for it, is a contract.

The second set is for an unlawful object, namely, that B may use the house as a gambling-house, and is a void agreement.

In alternative promise, one branch being illegal, legal branch alone enforceable.

58. In the case of an alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced.

Illustration.

A and B agree that A shall pay B 1,000 rupees, for which B shall afterwards deliver to A either rice or smuggled opium.

This is a valid contract to deliver rice, and a void agreement as to the opium.

APPROPRIATION OF PAYMENTS.

59. Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

Illustrations.

(a.) A owes B, among other debts, 1,000 rupees upon a promissory note, which falls due on the 1st June. He owes B no other debt of that amount. On the 1st June A pays to B 1,000 rupees. The payment is to be applied to the discharge of the promissory note.

(b.) A owes to B, among other debts, the sum of 567 rupees. B writes to A, and demands payment of this sum. A sends to B 567 rupees. This payment is to be applied to the discharge of the debt of which B had demanded payment.

60. Where the debtor has omitted to intimate, and there are no other

Application of payment circumstances indicating, to which debt the payment where debt to be discharged is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

61. Where neither party makes any appropriation, the payment shall be

Application of payment applied in discharge of the debts in order of time, where neither party appropriates, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionably.

CONTRACTS WHICH NEED NOT BE PERFORMED.

Contracts changed, rescinded, or altered, need not be performed.

62. If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

Illustrations.

(a.) A owes money to B under a contract. It is agreed between A, B, and C that B shall henceforth accept C as his debtor instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted.

(b.) A owes B 10,000 rupees. A enters into an arrangement with B, and gives B a mortgage of his (A's) estate for 5,000 rupees in place of the debt of 10,000 rupees. This is a new contract, and extinguishes the old.

(c.) A owes B 1,000 rupees under a contract. B owes C 1,000 rupees. B orders A to pay to C with 1,000 rupees in his hands, but C does not assent to the arrangement. B still owes C 1,000 rupees, and no new contract has been entered into.

Promisee may dispense with or remit performance of promise.

63. Every promisee may dispense with, or remit wholly or in part, the performance of the promise made to him, or may extend the time for such performance,* or may accept instead of it any satisfaction which he thinks fit.

Illustrations.

(a.) A promises to paint a picture for B. B afterwards forbids him to do so. A is no longer bound to perform the promise.

(b.) A owes B 5,000 rupees. A pays to B, and B accepts, in satisfaction of the whole debt, 2,000 rupees paid at the time and place at which the 5,000 rupees were payable. The whole debt is discharged.

(c.) A owes B 5,000 rupees. C pays to B 1,000 rupees, and B accepts them, in satisfaction of his claim on A. This payment is a discharge of the whole claim.†

(d.) A owes B, under a contract, a sum of money, the amount of which has not been ascertained. A, without ascertaining the amount, gives to B, and B, in satisfaction thereof, accepts, the sum of 2,000 rupees. This is a discharge of the whole debt, whatever may be its amount.

(e.) A owes B 2,000 rupees, and is also indebted to other creditors. A makes an arrangement with his creditors, including B, to pay them a compensation‡ of eight annas in the rupee upon their respective demands. Payment to B of 1,000 rupees is a discharge of B's demand.

64. When a person, at whose option a contract is voidable, rescinds it,

Consequences of rescission of voidable contract.

the other party thereto need not perform any promise therein contained in which he is promisor. The

* But see s. 135, *infra*.

† See s. 41, *supra*.

‡ Sic. Read 'composition.'

party rescinding a voidable contract shall, if he have received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received.*

Obligation of person who has received advantage under void agreement or contract that becomes void.

65. When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it or to make compensation for it to the person from whom he received it.

Illustrations.

(a.) A pays B 1,000 rupees in consideration of B's promising to marry C, A's daughter. C is dead at the time of the promise. The agreement is void, but B must repay A the 1,000 rupees.

(b.) A contracts with B to deliver to him 250 maunds of rice before the first of May. A delivers 130 maunds only before that day, and none after. B retains the 130 maunds after the first of May. He is bound to pay A for them.

(c.) A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her a hundred rupees for each night's performance. On the sixth night A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B must pay A for the five nights on which she had sung.

(d.) A contracts to sing for B at a concert for 1,000 rupees, which are paid in advance. A is too ill to sing. A is not bound to make compensation to B for the loss of the profits which B would have made if A had been able to sing, but must refund to B the 1,000 rupees paid in advance.

Mode of communicating or revoking rescission of voidable contract.

66. The rescission of a voidable contract may be communicated or revoked in the same manner, and subject to the same rules, as apply to the communication or revocation of a proposal.†

Effect of neglect of promisee to afford promisor reasonable facilities for performance.

67. If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.

Illustration.

A contracts with B to repair B's house.

B neglects or refuses to point out to A the places in which his house requires repair.

A is excused for the non-performance of the contract, in so far as it is caused by such neglect or refusal.

CHAPTER V.

OF CERTAIN RELATIONS RESEMBLING THOSE CREATED BY CONTRACT.

68. If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

Illustrations.

(a.) A supplies B, a lunatic, with necessaries suitable to his condition in life. A is entitled to be reimbursed from B's property.

(b.) A supplies the wife and children of B, a lunatic, with necessaries suitable to their condition in life. A is entitled to be reimbursed from B's property.

* See s. 75, *infra*.

† See ss. 3 and 5, *supra*.

Reimbursement of person paying money due by another in payment of which he is interested.

69. A person, who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

Illustration.

B holds land in Bengal on a lease granted by A, the zamindár. The revenue payable by A to the Government being in arrear, his land is advertised for sale by the Government. Under the revenue law, the consequence of such sale will be the annulment of B's lease. B, to prevent the sale and the consequent annulment of his own lease, pays to the Government the sum due from A. A is bound to make good to B the amount so paid.

70. Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

*Illustrations.**

(a.) A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them.

(b.) A saves B's property from fire. A is not entitled to compensation from B, if the circumstances show that he intended to act gratuitously.

71. A person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee.*

Liability of person to whom money is paid or thing delivered by mistake or under coercion.

72. A person to whom money has been paid or any thing delivered by mistake or under coercion† must repay or return it.

Illustrations.

(a.) A and B jointly owe 100 rupees to C. A alone pays the amount to C, and B, not knowing this fact, pays 100 rupees over again to C. C is bound to repay the amount to B.

(b.) A railway company refuses to deliver up certain goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.

CHAPTER VI.

OF THE CONSEQUENCES OF BREACH OF CONTRACT.

73. When a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

* See ss. 151 and 152, *infra*.

† See s. 15, *supra*.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

When an obligation resembling those created by contract has been incurred, and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default as if such person had contracted to discharge it, and had not broken his contract.

Explanation.—In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

Illustrations.

(a.) A contracts to sell and deliver 50 maunds of saltpetre to B, at a certain price to be paid on delivery. A breaks his promise. B is entitled to receive from A, by way of compensation, the sum, if any, by which the contract price falls short of the price for which B might have obtained 50 maunds of saltpetre of like quality at the time when the saltpetre ought to have been delivered.

(b.) A hires B's ship to go to Bombay, and there take on board, on the first of January, a cargo, which A is to provide, and to bring it to Calcutta, the freight to be paid when earned. B's ship does not go to Bombay, but A has opportunities of procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. A avails himself of those opportunities, but is put to trouble and expense in doing so. A is entitled to receive compensation from B in respect of such trouble and expense.

(c.) A contracts to buy of B, at a stated price, 50 maunds of rice, no time being fixed for delivery. A afterwards informs B that he will not accept the rice if tendered to him. B is entitled to receive from A, by way of compensation, the amount, if any, by which the contract price exceeds that which B can obtain for the rice at the time when A informs B that he will not accept it.

(d.) A contracts to buy B's ship for 60,000 rupees, but breaks his promise. A must pay to B, by way of compensation, the excess, if any, of the contract price over the price which B can obtain for the ship at the time of the breach of promise.

(e.) A, the owner of a boat, contracts with B to take a cargo of jute to Mirzapur, for sale at that place, starting on a specified day. The boat, owing to some avoidable cause, does not start at the time appointed, whereby the arrival of the cargo at Mirzapur is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of jute falls. The measure of the compensation payable to B by A is the difference between the price which B could have obtained for the cargo at Mirzapur at the time when it would have arrived if forwarded in due course, and its market price at the time when it actually arrived.

(f.) A contracts to repair B's house in a certain manner, and receives payment in advance. A repairs the house, but not according to contract. B is entitled to recover from A the cost of making the repairs conform to the contract.

(g.) A contracts to let his ship to B for a year, from the first of January, for a certain price. Freight rises, and, on the first of January, the hire obtainable for the ship is higher than the contract price. A breaks his promise. He must pay to B, by way of compensation, a sum equal to the difference between the contract price and the price for which B could hire a similar ship for a year on and from the first of January.

(h.) A contracts to supply B with a certain quantity of iron at a fixed price, being a higher price than that for which A could procure and deliver the iron. B wrongfully refuses to receive the iron. B must pay to A, by way of compensation, the difference between the contract price of the iron and the sum for which A could have obtained and delivered it.

(i.) A delivers to B, a common carrier, a machine, to be conveyed, without delay, to A's mill, informing B that his mill is stopped for want of the machine. B unreasonably delays the delivery of the machine, and A, in consequence, loses a profitable contract with the Government. A is entitled to receive from B, by way of compensation, the average amount of profit which would have been made by the working of the mill during the time that delivery of it was delayed, but not the loss sustained through the loss of the Government contract.

(j.) A, having contracted with B to supply B with 1,000 tons of iron at 100 rupees a ton, to be delivered at a stated time, contracts with C for the purchase of 1,000 tons of iron at 80 rupees a ton, telling C that he does so for the purpose of performing his contract with B. C fails to perform his contract with A, who cannot procure other iron, and B, in consequence, rescinds the contract. C must pay to A 20,000 rupees, being the profit which A would have made by the performance of his contract with B.

(k.) A contracts with B to make and deliver to B, by a fixed day, for a specified price, a certain piece of machinery. A does not deliver the piece of machinery at the time specified, and, in consequence of this, B is obliged to procure another at a higher price than that which he was to have paid to A, and is prevented from performing a contract which B had made with a third person at the time of his contract with A (but which had not been then communicated to A), and is compelled to make compensation for breach of that contract. A must pay to B, by way of compensation, the difference between the contract price of the piece of machinery and the sum paid by B for another, but not the sum paid by B to the third person by way of compensation.

(l.) A, a builder, contracts to erect and finish a house by the first of January, in order that B may give possession of it at that time to C, to whom B has contracted to let it. A is informed of the contract between B and C. A builds the house so badly that, before the first of January, it falls down, and has to be re-built by B, who, in consequence, loses the rent which he was to have received from C, and is obliged to make compensation to C for the breach of his contract. A must make compensation to B for the cost of re-building the house, for the rent lost, and for the compensation made to C.

(m.) A sells certain merchandise to B, warranting it to be of a particular quality, and B, in reliance upon this warranty, sells it to C with a similar warranty. The goods prove to be not according to the warranty, and B becomes liable to pay C a sum of money by way of compensation. B is entitled to be reimbursed this sum by A.

(n.) A contracts to pay a sum of money to B on a day specified. A does not pay the money on that day. B, in consequence of not receiving the money on that day, is unable to pay his debts, and is totally ruined. A is not liable to make good to B anything except the principal sum he contracted to pay, together with interest up to the day of payment.

(o.) A contracts to deliver 50 mounds of saltpetre to B on the first of January at a certain price. B afterwards, before the first of January, contracts to sell the saltpetre to C at a price higher than the market price of the first of January. A breaks his promise. In estimating the compensation payable by A to B, the market price of the first of January, and not the profit which would have arisen to B from the sale to C, is to be taken into account.

(p.) A contracts, to sell and deliver 500 bales of cotton to B on a fixed day. A knows nothing of B's mode of conducting his business. A breaks his promise, and B, having no cotton, is obliged to close his mill. A is not responsible to B for the loss caused to B by the closing of the mill.

(q.) A contracts to sell and deliver to B, on the first of January, certain cloth which B intends to manufacture into caps of a particular kind, for which there is no demand, except at that season. The cloth is not delivered till after the appointed time, and too late to be used that year in making caps. B is entitled to receive from A, by way of compensation, the difference between the contract price of the cloth and its market price at the time of delivery, but not the profits which he expected to obtain by making caps, nor the expenses which he has been put to in making preparation for the manufacture.

(r.) A, a ship-owner, contracts with B to convey him from Calcutta to Sydney in A's ship, sailing on the first of January, and B pays to A, by way of deposit, one-half of his passage-money. The ship does not sail on the first of January, and B, after being, in consequence, detained in Calcutta for some time, and thereby put to some expense, proceeds to Sydney in another vessel, and, in consequence, arriving too late in Sydney, loses a sum of money. A is liable to repay to B his deposit, with interest, and the expense to which he is put by his detention in Calcutta, and the excess, if any, of the passage-money paid for the second ship over that agreed upon for the first, but not the sum of money which B lost by arriving in Sydney too late.

74. When a contract has been broken, if a sum is named in the contract

Title to compensation for breach of contract in which a sum is named as payable in case of breach.

as the amount to be paid in case of such breach, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who

has broken the contract reasonable compensation not exceeding the amount so named.

EXCEPTION.—When any person enters into any bail-bond, recognizance, or other instrument of the same nature, or, under the provisions of any law or under the orders of the Government of India or of any local Government, gives any bond for the performance of any public duty or act, in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

Explanation.—A person who enters into a contract with Government does not necessarily thereby undertake any public duty or promise to do an act in which the public are interested.

Illustrations.

(a.) A contracts with B to pay B Rs. 1,000 if he fails to pay B Rs. 500 on a given day. A fails to pay B Rs. 500 on that day. B is entitled to recover from A such compensation, not exceeding Rs. 1,000, as the Court considers reasonable.

(b.) A contracts with B that, if A practises as a surgeon within Calcutta, he will pay B Rs. 5,000. A practises as a surgeon in Calcutta. B is entitled to such compensation, not exceeding Rs. 5,000, as the Court considers reasonable.

(c.) A gives a recognizance binding him in a penalty of Rs. 500 to appear in Court on a certain day. He forfeits his recognizance. He is liable to pay the whole penalty.

75. A person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract.^e

Party rightfully rescinding contract entitled to compensation.

Illustration.

(a.) A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B is entitled to claim compensation for the damage which he has sustained through the non-fulfilment of the contract.

CHAPTER VII.

SALE OF GOODS.

WHEN PROPERTY IN GOODS SOLD PASSES.

'Goods' defined.

76. In this chapter the word 'goods' means and includes every kind of moveable property.

'Sale' defined.

77. Sale is the exchange of property for a price. It involves the transfer of the ownership of the thing sold from the seller to the buyer.

Sale how effected.

78. Sale is effected by offer and acceptance of ascertained goods for a price,

or of a price for ascertained goods,
together with payment of the price or delivery of the goods; or with tender, part payment, earnest, or part delivery; or with an agreement, express or implied, that the payment or delivery, or both, shall be postponed.

Where there is a contract for the sale of ascertained goods, the property in the goods sold passes to the buyer when the whole or part of the price, or when the earnest, is paid, or when the whole or part of the goods is delivered.

If the parties agree expressly, or by implication, that the payment or delivery, or both, shall be postponed, the property passes as soon as the proposal for sale is accepted.

Illustrations.

(a.) B offers to buy A's horse for 500 rupees. A accepts B's offer, and delivers the horse to B. The horse becomes B's property on delivery.

(b.) A sends goods to B, with the request that he will buy them at a stated price if he approves of them, or return them if he does not approve of them. B retains the goods, and informs A that he approves of them. The goods become B's when B retains them.

(c.) B offers A, for his horse, 1,000 rupees, the horse to be delivered to B on a stated day, and the price to be paid on another stated day. A accepts the offer. The horse becomes B's as soon as the proposal is accepted.

(d.) B offers A, for his horse, 1,000 rupees, on a month's credit. A accepts the offer. The horse becomes B's as soon as the offer is accepted.

(e.) B, on the first January, offers to A, for a quantity of rice, 2,000 rupees, to be paid on the first March following, the rice not to be taken away till paid for. A accepts the offer. The rice becomes B's as soon as the offer is accepted.

79. Where there is a contract for the sale of a thing which has yet to be

Transfer of ownership of thing sold which has yet to be ascertained, made, or finished.

ascertained, made, or finished,* the ownership of the thing is not transferred to the buyer until it is ascertained, made, or finished.

Illustration.

B orders A, a barge-builder, to make him a barge. The price is not made payable by instalments. While the barge is building, B pays to A money from time to time on account of the price. The ownership of the barge does not pass to B until it is finished.

80. Where, by a contract for the sale of goods, the seller is to do any-

Completion of sale of goods which the seller is to put into a state in which buyer is to take them.

thing to them for the purpose of putting them into a state in which the buyer is to take them, the sale is not complete until such thing has been done.

Illustration.

(a.) A, a ship-builder, contracts to sell to B, for a stated price, a vessel which is lying in A's yard; the vessel to be rigged and fitted for a voyage, and the price to be paid on delivery. Under the contract, the property in the vessel does not pass to B until the vessel has been rigged, fitted up, and delivered.

Completion of sale of goods when seller has to do anything thereto in order to ascertain price.

81. Where anything remains to be done to the goods by the seller for the purpose of ascertaining the amount of the price, the sale is not complete until this has been done.

Illustrations.

(a.) A, the owner of a stack of bark, contracts to sell it to B, weigh and deliver it, at 100 rupees per ton. B agrees to take and pay for it on a certain day. Part is weighed and delivered to B; the ownership of the residue is not transferred to B until it has been weighed pursuant to the contract.

(b.) A contracts to sell a heap of clay to B at a certain price per ton. B is, by the contract, to load the clay in his own carts, and to weigh each load at a certain weighing machine, which his carts must pass on their way from A's grounds to B's place of deposit. Here nothing more remains to be done by the seller; the sale is complete, and the ownership of the heap of clay is transferred at once.

Completion of sale when goods are unascertained at date of contract.

82. Where the goods are not ascertained at the time of making the contract of sale, it is necessary to the completion of the sale that the goods shall be ascertained.†

* See s. 80.

† See s. 79.

Illustration.

A agrees to sell to B 20 tons of oil in A's cisterns. A's cisterns contain more than 20 tons of oil. No portion of the oil has become the property of B.

83. Where the goods are not ascertained at the time of making the

Ascertainment of goods by agreement for sale, but goods answering the description in the agreement are subsequently appropriated by one party for the purpose of the agreement, and that appropriation is assented to by the other, the goods have been ascertained, and the sale is complete.

Illustration.

A, having a quantity of sugar in bulk more than sufficient to fill 20 hogsheads, contracts to sell B 20 hogsheads of it. After the contract, A fills 20 hogsheads with the sugar, and gives notice to B that the hogsheads are ready, and requires him to take them away. B says he will take them as soon as he can. By this appropriation by A, and assent by B, the sugar becomes the property of B.

84. Where the goods are not ascertained at the time of making the

Ascertainment of goods by contract of sale, and, by the terms of the contract, the seller is to do an act with reference to the goods which cannot be done until they are appropriated to the buyer, the seller has a right to select any goods answering to the contract, and, by his doing so, the goods are ascertained.

Illustration.

B agrees with A to purchase of him, at a stated price, to be paid on a fixed day, 50 maunds of rice out of a larger quantity in A's granary. It is agreed that B shall send sacks for the rice, and that A shall put the rice into them. B does so, and A puts 50 maunds of rice into the sacks. The goods have been ascertained.

85. Where an agreement is made for the sale of immovable and moveable property combined, the ownership of the moveable property does not pass before the transfer of the immovable property.

Transfer of ownership of moveable property when sold together with immovable.

Illustration.

A agrees with B for the sale of a house and furniture. The ownership of the furniture does not pass to B until the house is conveyed to B.

Buyer to bear loss after goods have become his property.

86. When goods have become the property of the buyer, he must bear any loss arising from their destruction or injury.

Illustrations.

(a.) B offers, and A accepts, 100 rupees for a stack of fire-wood standing on A's premises, the fire-wood to be allowed to remain on A's premises till a certain day, and not to be taken away till paid for. Before payment, and while the fire-wood is on A's premises, it is accidentally destroyed by fire. B must bear the loss.

(b.) A bids 1,000 rupees for a picture at a sale by auction. After the bid, it is injured by an accident. If the accident happens before the hammer falls, the loss falls on the seller; if afterwards, on A.

87. When there is a contract for the sale of goods not yet in existence,

Transfer of ownership of goods agreed to be sold while non-existent.

the ownership of the goods may be transferred by acts done, after the goods are produced, in pursuance of the contract, by the seller, or by the buyer with the seller's assent.

Illustrations.

(a.) A contracts to sell to B, for a stated price, all the indigo which shall be produced at A's factory during the ensuing year. A, when the indigo has been manufactured, gives B an acknowledgment that he holds the indigo at his disposal. The ownership of the indigo vests in B from the date of the acknowledgment.

(b.) A, for a stated price, contracts that B may take and sell any crops that shall be grown on A's land in succession to the crops then standing. Under this contract, B, with the assent of A, takes possession of some crops grown in succession to the crops standing at the time of the contract. The ownership of the crops, when taken possession of, vests in B.

(c.) A, for a stated price, contracts that B may take and sell any crops that shall be grown on his land in succession to the crops then standing. Under this contract B applies to A for possession of some crops grown in succession to the crops which were standing at the time of the contract. A refuses to give possession. The ownership of the crops has not passed to B, though A may commit a breach of contract in refusing to give possession.

88. A contract for the sale of goods to be delivered at a future day is

Contract to sell and deliver, at a future day, goods not in seller's possession at date of contract.

binding, though the goods are not in the possession of the seller at the time of making the contract, and though, at that time, he has no reasonable expectation of acquiring them otherwise than by purchase.

Illustration.

A contracts, on the first January, to sell B 50 shares in the East Indian Railway Company, to be delivered and paid for on the first March of the same year. A, at the time of making the contract, is not in possession of any shares. The contract is valid.

89. Where the price of goods sold is not fixed by the contract of sale,

Determination of price not fixed by contract.

the buyer is bound to pay the seller such a price as the Court considers reasonable.

Illustration.

B, living at Patna orders of A, a coach-builder at Calcutta, a carriage of a particular description. Nothing is said by either as to the price. The order having been executed, and the price being in dispute between the buyer and the seller, the Court must decide what price it considers reasonable.

DELIVERY.

90. Delivery of goods sold may be made by doing anything which has

Delivery how made.

the effect of putting them in the possession of the buyer, or of any person authorized to hold them on his behalf.

Illustrations.

(a.) A sells to B a horse, and causes or permits it to be removed from A's stables to B's. The removal to B's stable is a delivery.

(b.) B, in England, orders 100 bales of cotton from A, a merchant of Bombay, and sends his own ship to Bombay for the cotton. The putting the cotton on board the ship is a delivery to B.

(c.) A sells to B certain specific goods which are locked up in a godown. A gives B the key of the godown, in order that he may get the goods. This is a delivery.

(d.) A sells to B five specific casks of oil. The oil is in the warehouse of A. B sells the five casks to C. A receives warehouse rent for them from C. This amounts to a delivery of the oil to C, as it shows an assent on the part of A to hold the goods as warehouseman of C.

(e.) A sell to B 50 maunds of rice in the possession of C, a warehouseman. A gives B an order to C to transfer the rice to B, and C assents to such order, and transfers the rice in his books to B. This is a delivery.

(f.) A agrees to sell B five tons of oil, at 1,000 rupees per ton to be paid for at the time of delivery. A gives to C, a wharfinger, at whose wharf he had twenty tons of the oil, an order to transfer five of them into the name of B. C makes the transfer in his books, and gives A's clerk a notice of the transfer for B. A's clerk takes the transfer-notice to B, and offers to give it him on payment of the price of the oil. B refuses to pay. There has been no delivery to B, as B never assented to make C his agent to hold for him the five tons selected by A.

91. A delivery to a wharfinger or carrier of the goods sold has the same effect as a delivery to the buyer, but does not render the buyer liable for the price of goods which do not reach him, unless the delivery is so made as to enable him to hold the wharfinger or carrier responsible for the safe custody or delivery of the goods.

Illustration.

B, at Agra, orders of A, who lives at Calcutta, three casks of oil to be sent to him by railway. A takes three casks of oil directed to B to the railway station, and leaves them there without conforming to the rules which must be complied with in order to render the Railway Company responsible for their safety. The goods do not reach B. There has not been a sufficient delivery to charge B in a suit for the price.

92. A delivery of part of goods, in progress of the delivery of the whole, has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole ; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder.

Illustrations.

(a.) A ship arrives in a harbour laden with a cargo consigned to A, the buyer of the cargo. The captain begins to discharge it, and delivers over part of the goods to A in progress of the delivery of the whole. This is a delivery of the cargo to A for the purpose of passing the property in the cargo.

(b.) A sells to B a stack of fire-wood, to be paid for by B on delivery. After the sale, B applies for and obtains from A leave to take away some of the fire-wood. This has not the legal effect of delivery of the whole.

(c.) A sells 50 maunds of rice to B. The rice remains in A's warehouse. After the sale, B sells to C 10 maunds of the rice, and A, at B's desire, sends the 10 maunds to C. This has not the legal effect of a delivery of the whole.

Seller not bound to deliver until buyer applies for delivery.

93. In the absence of any special promise, the seller of goods is not bound to deliver them until the buyer applies for delivery.*

94. In the absence of any special promise as to delivery, goods sold are to be delivered at the place at which they are at the time of the sale ; and goods contracted to be sold are to be delivered at the place at which they are at the time of the contract for sale, or, if not then in existence, at the place at which they are produced.

SELLER'S LIEN.

95. Unless a contrary intention appears by the contract, a seller has a lien† on sold goods as long as they remain in his possession, and the price or any part of it remains unpaid.‡

* See s. 46, *supra*.

† For the amount of the purchase-money.

‡ Or untendered.

96. Where, by the contract, the payment is to be made at a future day, but no time is fixed for the delivery of the goods, the seller has no lien, and the buyer is entitled to a present delivery of the goods without payment. But if the buyer becomes insolvent before delivery of the goods, or if the time appointed for payment arrives before the delivery of the goods, the seller may retain the goods for the price.

Explanation.—A person is insolvent who has ceased to pay his debts in the usual course of business, or who is incapable of paying them.

'Insolvency' defined.

Illustration.

A sells to B a quantity of sugar in A's warehouse. It is agreed that three months' credit shall be given. B allows the sugar to remain in A's warehouse. Before the expiry of the three months, B becomes insolvent. A may retain the goods for the price.

97. Where, by the contract, the payment is to be made at a future day, and the buyer allows the goods to remain in the possession of the seller until that day, and does not then pay for them, the seller may retain the goods for the price.

Seller's lien where payment to be made at future day, and buyer allows goods to remain in seller's possession.

Illustration.

A sells to B a quantity of sugar in A's warehouse. It is agreed that three months' credit shall be given. B allows the sugar to remain in A's warehouse till the expiry of the three months, and then does not pay for them. A may retain the goods for the price.

98. A seller, in possession of goods sold, may retain them for the price against any subsequent buyer, unless the seller has recognized the title of the subsequent buyer.

Seller's lien against subsequent buyer.

STOPPAGE IN TRANSIT.

99. A seller who has parted with the possession of the goods, and has not received the whole price, may, if the buyer becomes insolvent, stop the goods while they are in transit to the buyer.

Power of seller to stop in transit.

100. Goods are to be deemed in transit while they are in the possession of the carrier, or lodged at any place in the course of transmission to the buyer, and are not yet come into the possession of the buyer or any person on his behalf, otherwise than as being in possession of the carrier, or as being so lodged.

When goods are to be deemed in transit.

Illustrations.

(a.) B, living at Madras, orders goods of A, at Patna, and directs that they shall be sent to Madras. The goods are sent to Calcutta, and there delivered to C, a wharfinger, to be forwarded to Madras. The goods, while they are in the possession of C, are in transit.

(b.) B, at Delhi, orders goods of A, at Calcutta. A consigns and forwards the goods to B at Delhi. On arrival there, they are taken to the warehouse of B, and left there. B refuses to receive them, and immediately afterwards stops payment. The goods are in transit.

(c.) B, who lives at Puna, orders goods of A at Bombay. A sends them to Puna by C, a carrier appointed by B. The goods arrive at Puna, and are placed by C, at B's request, in C's warehouse for B. The goods are no longer in transit.

(d.) B, a merchant of London, orders 100 bales of cotton of A, a merchant at Bombay. B sends his own ship to Bombay for the cotton. The transit is at an end when the cotton is delivered on board the ship.

(e.) B, a merchant of London, orders 100 bales of cotton of A, a merchant at Bombay. B sends his own ship to Bombay for the cotton. A delivers the cotton on board the ship, and takes bills of lading from the master, making the cotton deliverable to A's order or assigns. The cotton arrives at London, but, before coming into B's possession, B becomes insolvent. The cotton has not been paid for. A may stop the cotton.

101. The seller's right of stoppage does not, except in the cases herein-

Continuance of right of stoppage. after mentioned, cease on the buyer's re-selling the goods while in transit, and receiving the price, but continues until the goods have been delivered to the second buyer, or to some person on his behalf.

102. The right of stoppage ceases if the buyer, having obtained a bill

Cessation of right on assignment, by buyer, of document showing title. of lading or other document showing title to the goods,* assigns it, while the goods are in transit, to a second buyer, who is acting in good faith, and who gives valuable consideration for them.

Illustrations.

(a.) A sells and consigns certain goods to B, and sends him the bill of lading. A being still unpaid, B becomes insolvent, and, while the goods are in transit, assigns the bill of lading for cash to C, who is not aware of his insolvency. A cannot stop the goods in transit.

(b.) A sells and consigns certain goods to B. A being still unpaid, B becomes insolvent, and, while the goods are still in transit, assigns the bill of lading for cash to C, who knows that B is insolvent. The assignment not being in good faith, A may still stop the goods in transit.

103. Where a bill of lading or other instrument of title to any goods is

How seller may stop where instrument of title assigned to secure specific advance. assigned by the buyer of such goods by way of pledge, to secure an advance made specifically upon it, in good faith, the seller cannot, except on payment or tender to the pledgee of the advance so made, stop the goods in transit.

Illustrations.

(a.) A sells and consigns goods to B of the value of 12,000 rupees. B assigns the bill of lading for these goods to C, to secure a specific advance of 5,000 rupees made to him upon the bill of lading by C. B becomes insolvent, being indebted to C the amount of 9,000 rupees. A is not entitled to stop the goods except on payment or tender to C of 5,000 rupees.

(b.) A sells and consigns goods to B of the value of 12,000 rupees. B assigns the bill of lading for these goods to C, to secure the sum of 5,000 rupees due from him to C, upon a general balance of account. B becomes insolvent. A is entitled to stop the goods in transit without payment or tender to C of the 5,000 rupees.

104. The seller may effect stoppage in transit, either by taking actual

Stoppage how effected. possession of the goods, or by giving notice of his claim to the carrier or other depositary in whose possession they are.

105. Such notice may be given either to the person who has the immediate

Notice of seller's claim. possession of the goods, or to the principal whose servant has possession. In the latter case the notice

* See s. 108, exception 1, *infra*.

must be given at such a time and under such circumstances that the principal, by the exercise of reasonable diligence, may communicate it to his servant in time to prevent a delivery to the buyer.

106. Stoppage in transit entitles the seller to hold the goods stopped until the price of the whole of the goods sold is paid.

Illustration.

A sells to B 100 bales of cotton; 60 bales having come into B's possession, and 40 being still in transit, B becomes insolvent, and A, being still unpaid, stops the 40 bales in transit. A is entitled to hold the 40 bales until the price of the 100 bales is paid.

RE-SALE.

107. Where the buyer of goods fails to perform his part of the contract, either by not taking the goods sold to him, or by not paying for them, the seller, having a lien on the goods, or having stopped them in transit, may, after giving notice to the buyer of his intention to do so, re-sell them, after the lapse of a reasonable time, and the buyer must bear any loss, but is not entitled to any profit, which may occur on such re-sale.

TITLE.

108. No seller can give to the buyer of goods a better title to those goods than he has himself, except in the following cases:—

EXCEPTION 1.—When any person is, by the consent of the owner, in possession of any goods, or of any bill of lading, dock-warrant, warehouse-keeper's certificate, wharfinger's certificate, or warrant or order for delivery, or other document showing title to goods, he may transfer the ownership of the goods, of which he is so in possession, or to which such documents relate, to any other person, and give such person a good title thereto, notwithstanding any instructions of the owner to the contrary: Provided that the buyer acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods or documents has no right to sell the goods.

EXCEPTION 2.—If one of several joint-owners of goods has the sole possession of them by the permission of the co-owners, the ownership of the goods is transferred to any person who buys them of such joint-owner in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods has no right to sell them.

EXCEPTION 3.—When a person has obtained possession of goods under a contract voidable at the option of the other party thereto, the ownership of the goods is transferred to a third person who, before the contract is rescinded, buys them in good faith of the person in possession; unless the circumstances which render the contract voidable amounted to an offence committed by the person in possession or those whom he represents.

In this case the original seller is entitled to compensation from the original purchaser for any loss which the seller may have sustained by being prevented from rescinding the contract.

Illustrations.

(a.) A buys from B, in good faith, a cow which B had stolen from C. The property in the cow is not transferred to A.

(b.) A, a merchant, entrusts B, his agent, with a bill of lading relating to certain goods, and instructs B not to sell the goods for less than a certain price, and not to give credit to D. B sells the goods to D for less than that price, and gives D three months' credit. The property in the goods passes to D.

(c.) A sells to B goods of which he has the bill of lading, but the bill of lading is made out for delivery of the goods to C, and it has not been endorsed by C. The property is not transferred to B.

(d.) A, B, and C, are joint Hindu brothers, who own certain cattle in common. A is left by B and C in possession of a cow, which he sells to D. D purchases *bond fide*. The property in the cow is transferred to D.

(e.) A, by a misrepresentation not amounting to cheating, induces B to sell and deliver to him a horse. A sells the horse to C before B has rescinded the contract. The property in the horse is transferred to C; and B is entitled to compensation from A for any loss which B has sustained by being prevented from rescinding the contract.

(f.) A compels B by wrongful intimidation, or induces him by cheating or forgery, to sell him a horse, and, before B rescinds the contract, sells the horse to C. The property is not transferred to C.

WARRANTY.

109. If the buyer, or any person claiming under him, is, by reason of the Seller's responsibility for invalidity of the seller's title, deprived of the thing badness of title. sold, the seller is responsible to the buyer, or the person claiming under him, for loss caused thereby, unless a contrary intention appears by the contract.

Establishment of implied warranty of goodness or quality.

110. An implied warranty of goodness or quality may be established by the custom of any particular trade.

Warranty of soundness implied on sale of provisions.

111. On the sale of provisions, there is an implied warranty that they are sound.

Warranty of bulk implied on sale of goods by sample.

112. On the sale of goods by sample, there is an implied warranty that the bulk is equal in quality to the sample.*

113. Where goods are sold as being of a certain denomination, there is an implied warranty that they are such goods as are commercially known by that denomination, although the buyer may have bought them by sample, or after inspection of the bulk.

Explanation.—But if the contract specifically states that the goods though sold as of a certain denomination, are not warranted to be of that denomination, there is no implied warranty.

Illustrations.

(a.) A, at Calcutta, sells to B twelve bags of 'waste silk,' then on its way from Murshedabad to Calcutta. There is an implied warranty by A that the silk shall be such as is known in the market under the denomination of 'waste silk.'

(b.) A buys, by sample and after having inspected the bulk, 100 bales of 'Fair Bengal' cotton. The cotton proves not to be such as is known in the market as 'Fair Bengal.' There is a breach of warranty.

114. Where goods have been ordered for a specified purpose, for which Warranty where goods or goods of the denomination mentioned in the order ordered for a specified purpose. are usually sold, there is an implied warranty by the seller that the goods supplied are fit for that purpose.*

* See s. 118, *infra*.

Illustration.

B orders of A, a copper-manufacturer, copper for sheathing a vessel. A, on this order, supplies copper. There is an implied warranty that the copper is fit for sheathing a vessel.

Warranty on sale of article of well-known ascertained kind.

115. Upon the sale of an article of a well-known ascertained kind, there is no implied warranty of its fitness for any particular purpose.

Illustration.

B writes to A, the owner of a patent invention for cleaning cotton, "Send me your patent cotton-cleaning machine to clean the cotton at my factory." A sends the machine according to order. There is an implied warranty by A that it is the article known as A's patent cotton-cleaning machine, but none that it is fit for the particular purpose of cleaning the cotton at B's factory.

116. In the absence of fraud and of any express warranty of quality, the seller of an article which answers the description under which it was sold is not responsible for a latent defect in it.

Seller when not responsible for latent defects.

Illustration.

A sells to B a horse. It turns out that the horse had, at the time of the sale a defect of which A was unaware. A is not responsible for this.

117. Where a specific article, sold with a warranty, has been delivered and accepted, and the warranty is broken, the sale is not thereby rendered voidable; but the buyer is entitled to compensation from the seller for loss caused by the breach of warranty.

Buyer's right on breach of warranty.

Illustration.

A sells and delivers to B a horse warranted sound. The horse proves to have been unsound at the time of sale. The sale is not thereby rendered voidable, but B is entitled to compensation from A for loss caused by the unsoundness.

118. Where there has been a contract, with a warranty, for the sale of goods which, at the time of the contract, were not ascertained or not in existence, and the warranty is broken, the buyer may

accept the goods or refuse to accept the goods when tendered, or keep the goods for a time reasonably sufficient for examining and trying them and then refuse to accept them; provided that, during such time, he exercises no other act of ownership over them than is necessary for the purpose of examination and trial.

In any case the buyer is entitled to compensation from the seller for any loss caused by the breach of warranty; but if he accepts the goods, and intends to claim compensation, he must give notice of his intention to do so within a reasonable time after discovering the breach of the warranty.

Illustrations.

(a.) A agrees to sell and, without application on B's part, deliver to B 200 bales of unascertained cotton by sample. Cotton, not in accordance with sample, is delivered to B. B may return it if he has not kept it longer than a reasonable time for the purpose of examination.

(b.) B agrees to buy of A twenty-five sacks of flour by sample. The flour is delivered to B, who pays the price. B, upon examination, finds it not equal to sample; B afterwards uses two sacks, and sells one. He cannot now rescind the contract and recover the price, but he is entitled to compensation from A for any loss caused by the breach of warranty.

(c.) B makes two pairs of shoes for A by A's order. When the shoes are delivered, they do not fit A. A keeps both pairs for a day. He wears one pair for a short time in the house, and takes a long walk out of doors in the other pair. He may refuse to accept the first pair, but not the second. But he may recover compensation for any loss sustained by the defect of the second pair.

MISCELLANEOUS.

119. When the seller sends to the buyer goods not ordered with goods ordered, the buyer may refuse to accept any of the goods so sent, if there is risk or trouble in separating the goods ordered from the goods not ordered.

When buyer may refuse to accept if goods not ordered are sent with goods ordered.

Illustration.

A orders of B specific articles of china. B sends these articles to A in a hamper, with other articles of china which had not been ordered. A may refuse to accept any of the goods sent.

Effect of wrongful refusal to accept.

120: If a buyer wrongfully refuses to accept the goods sold to him, this amounts to a breach of the contract of sale.

121. When goods sold have been delivered to the buyer, the seller is not entitled to rescind the contract on the buyer's failing to pay the price at the time fixed, unless it was stipulated by the contract that he should be so entitled.

Right of seller as to rescission on failure of buyer to pay price at time fixed.

122. Where goods are sold by auction, there is a distinct and separate sale of the goods in each lot, by which the ownership thereof is transferred as each lot is knocked down.

Sale and transfer of lots sold by auction.

Effect of use by sellers of pretended biddings to raise price.

123. If, at a sale by auction, the seller makes use of pretended biddings to raise the price, the sale is voidable at the option of the buyer.

CHAPTER VIII.

OF INDEMNITY AND GUARANTEE.

124. A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a 'contract of indemnity.'

'Contract of indemnity' defined.

Illustration.

A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 rupees. This is a contract of indemnity.

125. The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor—

Rights and liabilities of indemnity-holder when sued.

(1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;

(2) all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit ;

(3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorized him to compromise the suit.

126. A 'contract of guarantee' is a contract to perform the promise, or 'Contract of guarantee,' discharge the liability, of a third person in case of 'surety,' 'principal debtor,' his default. The person who gives the guarantee is and 'creditor.' called the 'surety,' the person in respect of whose default the guarantee is given is called the 'principal debtor,' and the person to whom the guarantee is given is called the creditor. A guarantee may be either oral or written.

127. Anything done, or any promise made, for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee.

Illustrations.

(a.) B requests A to sell and deliver to him goods on credit. A agrees to do so, provided C will guarantee the payment of the price of the goods. C promises to guarantee the payment in consideration of A's promise to deliver the goods. This is a sufficient consideration for C's promise.

(b.) A sells and delivers goods to B. C afterwards requests A to forbear to sue B for the debt for a year, and promises that, if he does so, C will pay for them in default of payment by B. A agrees to forbear as requested. This is a sufficient consideration for C's promise.

(c.) A sells and delivers goods to B. C afterwards, without consideration, agrees to pay for them in default of B. The agreement is void.

128. The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

Surety's liability.

Illustration.

A guarantees to B the payment of a bill of exchange by C, the acceptor. The bill is dishonoured by C. A is liable, not only for the amount of the bill, but also for any interest and charges which may have become due on it.

129. A guarantee which extends to a series of transactions is called a 'continuing guarantee.'

'Continuing guarantee.'

Illustrations.

(a.) A, in consideration that B will employ C in collecting the rents of B's zamindari, promises B to be responsible, to the amount of 5,000 rupees, for the due collection and payment by C of those rents. This is a continuing guarantee.

(b.) A guarantees payment to B, a tea-dealer, to the amount of £100, for any tea he may from time to time supply to C. B supplies C with tea to above the value of £100, and C pays B for it. Afterwards B supplies C with tea to the value of £200. C fails to pay. The guarantee given by A was a continuing guarantee, and he is accordingly liable to B to the extent of £100.

(c.) A guarantees payment to B of the price of five sacks of flour to be delivered by B to C, and to be paid for in a month. B delivers five sacks to C. C pays for them. Afterwards B delivers four sacks to C, which C does not pay for. The guarantee given by A was not a continuing guarantee, and accordingly he is not liable for the price of the four

Revocation of continuing guarantee.

130. A continuing guarantee may at any time be revoked by the surety, as to future transactions, by notice to the creditor.

Illustrations.

(a.) A, in consideration of B's discounting, at A's request, bills of exchange for C, guarantees to B for twelve months the due payment of all such bills to the extent of 5,000 rupees. B discounts bills for C to the extent of 2,000 rupees. Afterwards, at the end of three months, A revokes the guarantee. This revocation discharges A from all liability to B for any subsequent discount. But A is liable to B for the 2,000 rupees, on default of C.

(b.) A guarantees to B, to the extent of 10,000 rupees, that C shall pay all the bills that B shall draw upon him. B draws upon C. C accepts the bill. A gives notice of revocation. C dishonours the bill at maturity. A is liable upon his guarantee.

131. The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions.

132. Where two persons contract with a third person to undertake a certain liability, and also contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to such contract, the liability of each of such two persons to the third person under the first contract is not affected by the existence of the second contract, although such third person may have been aware of its existence.

Illustration.

A and B make a joint and several promissory note to C. A makes it, in fact, as surety for B, and C knows this at the time when the note is made. The fact that A, to the knowledge of C, made the note as surety for B, is no answer to a suit by C against A upon the note.

133. Any variance, made without the surety's consent, in the terms of the contract between the principal and the creditor, discharges the surety as to transactions subsequent to the variance.

Illustrations.

(a.) A becomes surety to C for B's conduct as a manager in C's bank. Afterwards, B and C contract, without A's consent, that B's salary shall be raised, and that he shall become liable for one-fourth of the losses on over drafts. B allows a customer to overdraw, and the bank loses a sum of money. A is discharged from his suretyship by the variance made without his consent, and is not liable to make good this loss.

(b.) A guarantees C against the misconduct of B in an office to which B is appointed by C, and of which the duties are defined by an Act of the Legislature. By a subsequent Act, the nature of the office is materially altered. Afterwards, B misconducts himself. A is discharged by the change from future liability under his guarantee, though the misconduct of B is in respect of a duty not affected by the later Act.

(c.) C agrees to appoint B as his clerk to sell goods at a yearly salary, upon A's becoming surety to C for B's duly accounting for moneys received by him as such clerk. Afterwards, without A's knowledge or consent, C and B agree that B should be paid by a commission on the goods sold by him, and not by a fixed salary. A is not liable for subsequent misconduct of B.

(d.) A gives to C a continuing guarantee to the extent of 3,000 rupees for any oil supplied by C to B on credit. Afterwards B becomes embarrassed, and, without the knowledge of A, B and C contract that C shall continue to supply B with oil for ready money, and that the payments shall be applied to the then existing debts between B and C. A is not liable on his guarantee for any goods supplied after this new arrangement.

(e.) C contracts to lend B 5,000 rupees on the first March. A guarantees repayment. C pays the 5,000 rupees to B on the first January. A is discharged from his liability, as the contract has been varied, inasmuch as C might sue B for the money before the first of March.

134. The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.*

Discharge of surety by release or discharge of principal debtor.

Illustrations.

(a.) A gives a guarantee to C for goods to be supplied by C to B. C supplies goods to B, and afterwards B becomes embarrassed and contracts with his creditors (including C) to assign to them his property in consideration of their releasing him from their demands. Here B is released from his debt by the contract with C, and A is discharged from his suretyship.

(b.) A contracts with B to grow a crop of indigo on A's land and to deliver it to B at a fixed rate, and C guarantees A's performance of this contract. B diverts a stream of water which is necessary for the irrigation of A's land, and thereby prevents him from raising the indigo. C is no longer liable on his guarantee.

(c.) A contracts with B for a fixed price to build a house for B within a stipulated time, B supplying the necessary timber. C guarantees A's performance of the contract. B omits to supply the timber. C is discharged from his suretyship.

135. A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract.

Discharge of surety when creditor compounds with, gives time to, or agrees not to sue principal debtor.

Surety not discharged when contract made with a third person to give time to principal debtor.

136. Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged.

Illustration.

C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with M to give time to B. A is not discharged.

137. Mere forbearance on the part of the creditor to sue the principal debtor, or to enforce any other remedy against him, does not, in the absence of any provision in the guarantee to the contrary, discharge the surety.

Creditor's forbearance to sue does not discharge surety.

Illustration.

B owes to C a debt guaranteed by A. The debt becomes payable. C does not sue B for a year after the debt has become payable. A is not discharged from his suretyship.

138. Where there are co-sureties, a release by the creditor of one of them does not discharge the others; neither does it free the surety so released from his responsibility to the other sureties.†

Release of one co-surety does not discharge others.

* See *supra*, ss. 39, 53, 54, 55, 62, 63, 67, 118, 120.

† See s. 44, *supra*.

139. If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.
- Discharge of surety by creditor's act or omission impairing surety's eventual remedy.

Illustrations.

- (a.) B contracts to build a ship for C for a given sum, to be paid by instalments as the work reaches certain stages. A becomes surety to C for B's due performance of the contract. C, without the knowledge of A, prepays to B the last two instalments. A is discharged by this prepayment.*
- (b.) C lends money to B on the security of a joint and several promissory note made in C's favour by B and by A as surety for B, together with a bill of sale of B's furniture, which gives power to C to sell the furniture, and apply the proceeds, in discharge of the note. Subsequently C sells the furniture, but, owing to his misconduct and wilful negligence, only a small price is realized. A is discharged from liability on the note.
- (c.) A puts M as apprentice to B, and gives a guarantee to B for M's fidelity. B promises on his part that he will, at least once a month, see M make up the cash. B omits to see this done as promised, and M embezzles. A is not liable to B on his guarantee.

140. Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.†

141. A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.‡

Illustrations.

- (a.) C advances to B, his tenant, 2,000 rupees on the guarantee of A. C has also a further security for the 2,000 rupees by a mortgage of B's furniture. C cancels the mortgage. B becomes insolvent, and C sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture.
- (b.) C, a creditor, whose advance to B is secured by a decree, receives also a guarantee for that advance from A. C afterwards takes B's goods in execution under the decree, and then, without the knowledge of A, withdraws the execution. A is discharged.
- (c.) A, as surety for B, makes a bond jointly with B to C to secure a loan from C to B. Afterwards C obtains from B a further security for the same debt. Subsequently C gives up the further security. A is not discharged.

142. Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.
- Guarantee obtained by misrepresentation invalid.

143. Any guarantee which the creditor has obtained by means of keeping silence as to a material circumstance is invalid.
- Guarantee obtained by concealment invalid.

* See s. 133, *supra*.

† *E. g.*, the right to stop in transit.

‡ See s. 139, *supra*.

Illustrations.

(a.) A engages B as clerk to collect money for him. B fails to account for some of his receipts, and A in consequence calls upon him to furnish security for his duly accounting. C gives his guarantee for B's duly accounting. A does not acquaint C with B's previous conduct. B afterwards makes default. The guarantee is invalid.

(b.) A guarantees to C payment for iron to be supplied by him to B to the amount of 2,000 tons. B and C have privately agreed that B should pay five rupees per ton beyond the market price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A. A is not liable as a surety.

144. Where a person gives a guarantee upon a contract that the

Guarantee on contract that creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.*

145. In every contract of guarantee there is an implied promise by the

Implied promise to indemnify principal debtor to indemnify the surety; and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully.

Illustrations.

(a.) B is indebted to C, and A is surety for the debt. C demands payment from A, and on his refusal sues him for the amount. A defends the suit, having reasonable grounds for doing so, but he is compelled to pay the amount of the debt with costs. He can recover from B the amount paid by him for costs, as well as the principal debt.

(b.) C lends B a sum of money, and A, at the request of B, accepts a bill of exchange drawn by B upon A to secure the amount. C, the holder of the bill, demands payment of it from A, and on A's refusal to pay, sues him upon the bill. A, not having reasonable grounds for so doing, defends the suit, and has to pay the amount of the bill and costs. He can recover from B the amount of the bill, but not the sum paid for costs, as there was no real ground for defending the action.

(c.) A guarantees to C, to the extent of 2,000 rupees, payment for rice to be supplied by C to B. C supplies to B rice to a less amount than 2,000 rupees, but obtains from A payment of the sum of 2,000 rupees in respect of the rice supplied. A cannot recover from B more than the price of the rice actually supplied.

146. Where two or more persons are co-sureties for the same debt or

Co-sureties liable to contribute equally. duty, either jointly or severally, and whether under the same or different contracts, and whether with or without the knowledge of each other, the co-sureties, in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor.†

Illustrations.

(a.) A, B, and C, are sureties to D for the sum of 3,000 rupees lent to E. E makes default in payment. A, B, and C, are liable as between themselves to pay 1,000 rupees each.

(b.) A, B, and C, are sureties to D for the sum of 1,000 rupees lent to E, and there is a contract between A, B, and C that A is to be responsible to the extent of one-quarter, B to the extent of one quarter, and C to the extent of one-half. E makes default in payment. As between the sureties, A is liable to pay 250 rupees, B 250 rupees, and C 500 rupees.

147. Co-sureties, who are bound in different sums, are liable to pay equally as far as the limits of their respective obligations permit.†

Liability of co-sureties bound in different sums.

* See. s. 33, *supra*.

| † See. s. 43, *supra*.

Illustrations.

(a.) A, B, and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 30,000 rupees. A, B, and C, are each liable to pay 10,000 rupees.

(b.) A, B, and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 40,000 rupees. A is liable to pay 10,000 rupees, and B and C 15,000 rupees each.

(c.) A, B, and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 70,000 rupees. A, B, and C, have to pay each the full penalty of his bond.

CHAPTER IX.

OF BAILMENT.

148. A 'bailment' is the delivery of goods by one person to another for 'Bailment,' 'bailor,' and some purpose, upon a contract that they shall, when 'bailee' defined. the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the 'bailor.' The person to whom they are delivered is called the 'bailee.'

Explanation.—If a person, already in possession of the goods of another, contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor of such goods, although they may not have been delivered by way of bailment.

149. The delivery to the bailee may be made by doing anything which Delivery to bailee how has the effect of putting the goods in the possession made. of the intended bailee or of any person authorized to hold them on his behalf.

150. The bailor is bound to disclose to the bailee faults in the goods Bailor's duty to disclose bailed, of which the bailor is aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risks; and if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.

If the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

Illustrations.

(a.) A lends a horse, which he knows to be vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. A is responsible to B for damage sustained.

(b.) A hires a carriage of B. The carriage is unsafe, though B is not aware of it, and A is injured. B is responsible to A for the injury.

151. In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality, and value as the goods bailed.

152. The bailee, in the absence of any special contract, is not responsible for the loss, destruction, or deterioration of the thing bailed, if he has taken the amount of care of it described in section 151.

Bailee when not liable for loss, &c., of thing bailed

153. A contract of bailment is voidable at the option of the bailor, if the bailee does any act with regard to the goods bailed inconsistent with the conditions of the bailment.

Termination of bailment by bailee's act inconsistent with conditions.

Illustration.

A lets to B for hire a horse for his own riding. B drives the horse in his carriage. This is, at the option of A, a termination of the bailment.

154. If the bailee makes any use of the goods bailed which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

Liability of bailee making unauthorized use of goods bailed.

Illustrations.

(a.) A lends a horse to B for his own riding only. B allows C, a member of his family, to ride the horse. C rides with care, but the horse accidentally falls and is injured. B is liable to make compensation to A for the injury done to the horse.

(b.) A hires a horse in Calcutta from B expressly to march to Benares. A rides with due care, but marches to Cuttack instead. The horse accidentally falls and is injured. A is liable to make compensation to B for the injury to the horse.

155. If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced.

Effect of mixture, with bailor's consent, of his goods with bailee's.

156. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated or divided, the property in the goods remains in the parties respectively; but the bailee is bound to bear the expense of separation, or division, and any damage arising from the mixture.

Effect of mixture, without bailor's consent, when the goods can be separated.

Illustration.

A bails 100 bales of cotton marked with a particular mark to B. B, without A's consent, mixes the 100 bales with other bales of his own bearing a different mark. A is entitled to have his 100 bales returned, and B is bound to bear all the expense incurred in the separation of the bales and any other incidental damage.

157. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods in such a manner that it is impossible to separate the goods bailed from the other goods, and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

Effect of mixture, without bailor's consent, when the goods cannot be separated.

Illustration.

A bails a barrel of Cape flour worth Rs. 45 to B. B, without A's consent, mixes the flour with country flour of his own, worth only Rs. 25 a barrel. B must compensate A for the loss of his flour.

158. Where, by the conditions of the bailment, the goods are to be kept Re-payment by bailor of or to be carried, or to have work done upon them by necessary expenses. the bailee for the bailor, and the bailee is to receive no remuneration, the bailor shall re-pay to the bailee the necessary expenses incurred by him for the purpose of the bailment.

159. The lender of a thing for use may at any time require its return, if Restoration of goods lent the loan was gratuitous, even though he lent it for a gratuitously. specified time or purpose. But if, on the faith of such loan, made for a specified time or purpose, the borrower has acted in such a manner that the return of the thing lent before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the loan, the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived.

160. It is the duty of the bailee to return, or deliver according to the Return of goods bailed on expiration of time or accomplishment of purpose. bailor's directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.

161. If by the fault of the bailee the goods are not returned, delivered, or tendered at the proper time, he is responsible to the bailor for any loss, destruction, or deterioration of the goods from that time. Bailee's responsibility when goods are not duly returned.

Termination of gratuitous bailment by death.

162. A gratuitous bailment is terminated by the death either of the bailor or of the bailee.

163. In the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed. Bailor entitled to increase or profit from goods bailed.

Illustration.

A leaves a cow in the custody of B to be taken care of. The cow has a calf. B is bound to deliver the calf as well as the cow to A.

164. The bailor is responsible to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods, or to give directions respecting them. Bailor's responsibility to bailee.

165. If several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all, in the absence of any agreement to the contrary. Bailment by several joint owners.

166. If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery. Bailee not responsible on re-delivery to bailor without title.

167. If a person, other than the bailor, claims goods bailed, he may apply to the Court to stop the delivery of the goods to the bailor, and to decide the title to the goods. Right of third person claiming goods bailed.

168. The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner ; but he may retain the goods against the owner until he receives such compensation ; and where the owner has offered a specific reward offered. reward for the return of goods lost, the finder may sue for such reward, and may retain the goods until he receives it.

169. When a thing, which is commonly the subject of sale, is lost, if the owner cannot, with reasonable diligence, find it, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it—

(1) when the thing is in danger of perishing or of losing the greater part of its value ; or,

(2) when the lawful charges of the finder in respect of the thing found amount to two-thirds of its value.

170. Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.

Illustrations.

(a.) A delivers a rough diamond to B, a jeweller, to be cut and polished, which is accordingly done. B is entitled to retain the stone till he is paid for the services he has rendered.

(b.) A gives cloth to B, a tailor, to make into a coat. B promises A to deliver the coat as soon as it is finished, and to give A three months' credit for the price. B is not entitled to retain the coat until he is paid.

171. Bankers, factors, wharfingers, attorneys of a High Court, and policy-brokers, may, in the absence of a contract to the contrary, retain, as a security for a general balance of account, any goods bailed to them ; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect.

BAILMENTS OF PLEDGES.

172. The bailment of goods as security for payment of a debt or performance of a promise is called 'pledge.' The bailor is in this case called the 'pawnor.' The bailee is called the 'pawnee.'

'Pledge,' 'pawnor,' and 'pawnee' defined.

173. The pawnee may retain the goods pledged, not only for payment of the debt, or the performance of the promise, but for the interest of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

Pawnee not to retain for debt or promise other than that for which goods pledged.

Presumption in case of subsequent advances.

174. The pawnee shall not, in the absence of a contract to that effect, retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged ; but such contract, in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the pawnee.

175. The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

176. If the pawnor makes default in payment of the debt, or performance, at the stipulated time, of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security ; or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale.

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

177. If a time is stipulated for the payment of the debt, or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them ; but he must, in that case, pay, in addition, any expenses which have arisen from his default.

178. A person who is in possession of any goods or of any bill of lading, dock-warrant, warehouse-keeper's certificate, wharfinger's certificate, or warrant or order for delivery, or any other document of title to goods, may make a valid pledge of such goods or documents : Provided that the pawnee acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the pawnor is acting improperly :

Provided also that such goods or documents have not been obtained from their lawful owner, or from any person in lawful custody of them, by means of an offence or fraud.

179. Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.

SUITS BY BAILEES OR BAILORS AGAINST WRONG-DOERS.

180. If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made ; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

Apportionment of relief or compensation obtained by such suits.

181. Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.

CHAPTER X.

AGENCY.

APPOINTMENT AND AUTHORITY OF AGENTS.

182. An 'agent' is a person employed to do any act for another, or to 'Agent' and 'principal' represent another in dealings with third persons. defined. The person for whom such act is done, or who is so represented, is called the 'principal.'

183. Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may Who may employ agent. employ an agent.

184. As between the principal and third persons, any person may become Who may be an agent an agent; but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained.

Consideration not necessary.

185. No consideration is necessary to create an agency.

Agent's authority may be expressed or implied.

186. The authority of an agent may be expressed or implied.

187. An authority is said to be express when it is given by words spoken Definitions of express and or written. An authority is said to be implied when implied authority it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case.

Illustration.

A owns a shop in Serampore, living himself in Calcutta, and visiting the shop occasionally. The shop is managed by B, and he is in the habit of ordering goods from C in the name of A for the purposes of the shop, and of paying for them out of A's funds with A's knowledge. B has an implied authority from A to order goods from C in the name of A for the purposes of the shop.

188. An agent, having an authority to do an act, has authority to do every lawful thing which is necessary in order to do such act.

An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course, of conducting such business.

Illustrations.

(a.) A is employed by B, residing in London, to recover at Bombay a debt due to B. A may adopt any legal process necessary for the purpose of recovering the debt, and may give a valid discharge for the same.

(b.) A constitutes B his agent to carry on his business of a ship-builder. B may purchase timber and other materials, and hire workmen, for the purpose of carrying on the business.

189. An agent has authority, in an emergency, to do all such acts for the Agent's authority in an purpose of protecting his principal from loss as would emergency. be done by a person of ordinary prudence in his own case under similar circumstances.

Illustrations.

- (a.) An agent for sale may have goods repaired if it be necessary.
 (b.) A consigns provisions to B at Calcutta, with directions to send them immediately to C at Cuttack. B may sell the provisions at Calcutta if they will not bear the journey to Cuttack without spoiling.

SUB-AGENTS.

190. An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature of the agency, a sub-agent must be employed.

191. A 'sub-agent' is a person employed by, and acting under the control of, the original agent in the business of the agency.

192. Where a sub-agent is properly appointed, the principal is, so far as regards third persons, represented by the sub-agent, and is bound by and responsible for his acts, as if he were an agent originally appointed by the principal.

The agent is responsible to the principal for the acts of the sub-agent:

Sub-agent's responsibility.

The sub-agent is responsible for his acts to the agent, but not to the principal, except in cases of fraud or wilful wrong.

193. Where an agent, without having authority to do so, has appointed a person to act as a sub-agent, the agent stands towards such person in the relation of a principal to an agent, and is responsible for his acts both to the principal and to third persons; the principal is not represented by or responsible for the acts of the persons so employed, nor is that person responsible to the principal.

194. Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

Illustrations.

(a.) A directs B, his solicitor, to sell his estate by auction, and to employ an auctioneer for the purpose. B names C, an auctioneer, to conduct the sale. C is not a sub-agent, but is A's agent for the conduct of the sale.

(b.) A authorizes B, a merchant in Calcutta, to recover the monies due to A from C & Co. B instructs D, a solicitor, to take legal proceedings against C & Co. for the recovery of the money. D is not a sub-agent, but is solicitor for A.

195. In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.

Illustrations.

(a.) A instructs B, a merchant, to buy a ship for him. B employs a ship-surveyor of good reputation to choose a ship for A. The surveyor makes the choice negligently, and the ship turns out to be unseaworthy, and is lost. B is not, but the surveyor is, responsible to A.

(b.) A consigns goods to B, a merchant, for sale. B, in due course, employs an auctioneer in good credit to sell the goods of A, and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. B is not responsible to A for the proceeds.

RATIFICATION.

196. Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratify them, the same effects will follow as if they had been performed by his authority.

Right of person as to acts done for him without his authority.

197. Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.

Effect of ratification.

Illustrations.

(a.) A, without authority, buys goods for B. Afterwards B sells them to C on his own account. B's conduct implies a ratification of the purchase made for him by A.

(b.) A, without B's authority, lends B's money to C. Afterwards B accepts interest on the money from C. B's conduct implies a ratification of the loan.

198. No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.

Knowledge requisite to valid ratification.

Effect of ratifying unauthorized act forming part of a transaction:

199. A person ratifying any unauthorized act done on his behalf ratifies the whole of the transaction of which such act formed a part.

200. An act done by one person on behalf of another without such other person's authority, which, if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect.

Illustrations.

(a.) A, not being authorized thereto by B, demands, on behalf of B, the delivery of a chattel, the property of B from C, who is in possession of it. This demand cannot be ratified by B, so as to make C liable for damages for his refusal to deliver.

(b.) A holds a lease from B, terminable on three months' notice. C, an unauthorized person, gives notice of termination to A. The notice cannot be ratified by B, so as to be binding on A.

REVOCATION OF AUTHORITY.

201. An agency is terminated by the principal revoking his authority; or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.

202. Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

Termination of agency, where agent has an interest in subject-matter.

Illustrations.

(a.) A gives authority to B to sell A's land, and to pay himself out of the proceeds the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death.

(b.) A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself out of the price the amount of his own advances. A cannot revoke this authority, nor is it terminated by his insanity or death.

203. The principal may, save as is otherwise provided by the last preceding section, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal.

204. The principal cannot revoke the authority given to his agent after the authority has been partly exercised, so far as regards such acts and obligations as arise from acts already done in the agency.

Illustrations.

(a.) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's monies remaining in B's hands. B buys 1,000 bales of cotton in his own name, so as to make himself personally liable for the price. A cannot revoke B's authority so far as regards payment for the cotton.

(b.) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's monies remaining in B's hands. B buys 1,000 bales of cotton in A's name, and so as not to render himself personally liable for the price. A can revoke B's authority to pay for the cotton.

205. Where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause.

206. Reasonable notice must be given of such revocation or renunciation; otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.

Revocation and renunciation may be expressed or implied.

207. Revocation and renunciation may be expressed, or may be implied in the conduct of the principal or agent respectively.

Illustration.

A empowers B to let A's house. Afterwards A lets it himself. This is an implied revocation of B's authority.

When termination of agent's authority takes effect as to agent and as to third persons.

208. The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

Illustrations.

(a.) A directs B to sell goods for him, and agrees to give B five per cent. commission on the price fetched by the goods. A afterwards, by letter, revokes B's authority. B, after the letter is sent, but before he receives it, sells the goods for 100 rupees. The sale is binding on A, and B is entitled to five rupees as his commission.

(b.) A, at Madras, by letter, directs B to sell for him some cotton lying in a warehouse in Bombay, and afterwards, by letter, revokes his authority to sell, and directs B to send the cotton to Madras. B, after receiving the second letter, enters into a contract with C, who knows of the first letter, but not of the second, for the sale to him of the cotton. C pays B the money, with which B absconds. C's payment is good as against A.

(c.) A directs B, his agent, to pay certain money to C. A dies, and D takes out probate to his will. B, after A's death, but before hearing of it, pays the money to C. The payment is good as against D, the executor.

209. When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

210. The termination of the authority of an agent causes the termination of the authority of all sub-agents appointed by him. (subject to the rules herein contained regarding the termination of an agent's authority)

AGENT'S DUTY TO PRINCIPAL.

211. An agent is bound to conduct the business of his principal according to the directions given by the principal, or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and, if any profit accrues, he must account for it.

Illustrations.

(a.) A, an agent engaged in carrying on for B a business, in which it is the custom to invest from time to time, at interest, the monies which may be in hand, omits to make such investment. A must make good to B the interest usually obtained by such investments.

(b.) B, a broker, in whose business it is not the custom to sell on credit, sells goods of A on credit to C, whose credit at the time was very high. C, before payment, becomes insolvent. B must make good the loss to A.

212. An agent is bound to conduct the business of the agency with skill and diligence as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill, or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill, or misconduct.

Illustrations.

(a.) A, a merchant in Calcutta, has an agent, B, in London, to whom a sum of money is paid on A's account, with orders to remit. B retains the money for a considerable time. A, in consequence of not receiving the money, becomes insolvent. B is liable for the money and interest from the day on which it ought to have been paid, according to the usual rate, and for any further direct loss—as, e. g., by variation of rate of exchange—but not further.

(b.) A, an agent for the sale of goods, having authority to sell on credit, sells to B, on credit, without making the proper and usual enquiries as to the solvency of B. B, at the time of such sale, is insolvent. A must make compensation to his principal in respect of any loss thereby sustained.

(c.) A, an insurance-broker, employed by B to effect an insurance on a ship, omits to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses nothing can be recovered from the underwriters. A is bound to make good the loss to B.

(d.) A, a merchant in England, directs B, his agent at Bombay, who accepts the agency, to send him 100 bales of cotton by a certain ship. B, having it in his power to send the cotton, omits to do so. The ship arrives safely in England. Soon after her arrival the price of cotton rises. B is bound to make good to A the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.

Agent's accounts.

213. An agent is bound to render proper accounts to his principal on demand.

214. It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.

215. If an agent deals on his own account in the business of the agency, without first obtaining the consent of his principal, and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction, if the case show, either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him.

Illustrations.

(a.) A directs B to sell A's estate. B buys the estate for himself in the name of C. A, on discovering that B has bought the estate for himself, may repudiate the sale, if he can show that B has dishonestly concealed any material fact, or that the sale has been disadvantageous to him.

(b.) A directs B to sell A's estate. B, on looking over the estate before selling it, finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself but conceals the discovery of the mine. A allows B to buy, in ignorance of the existence of the mine. A, on discovering that B knew of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option.

216. If an agent, without the knowledge of his principal, deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.

Illustration.

A directs B, his agent, to buy a certain house for him. B tells A it cannot be bought, and buys the house for himself. A may, on discovering that B has bought the house, compel him to sell it to A at the price he gave for it.

217. An agent may retain, out of any sums received on account of the principal in the business of the agency, all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent.

Agent's duty to pay sums received for principal.

218. Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.

219. In the absence of any special contract, payment for the performance of any act is not due to the agent until the completion of such act; but an agent may detain moneys received by him on account of goods sold, although the whole of the goods consigned to him for sale may not have been sold, or although the sale may not be actually complete.

Agent not entitled to remuneration for business misconducted.

220. An agent, who is guilty of misconduct in the business of the agency, is not entitled to any remuneration in respect of that part of the business which he has misconducted.

Illustrations.

(a.) A employs B to recover 1,00,000 rupees from C, and to lay it out on good security. B recovers the 1,00,000 rupees, and lays out 90,000 rupees on good security, but lays out 10,000 rupees on security which he ought to have known to be bad, whereby A loses 2,000 rupees. B is entitled to remuneration for recovering the 1,00,000 rupees and for investing the 90,000 rupees. He is not entitled to any remuneration for investing the 10,000 rupees, and he must make good the 2,000 rupees to B.

(b.) A employs B to recover 1,000 rupees from C. Through B's misconduct the money is not recovered. B is entitled to no remuneration for his services, and must make good the loss.

221. In the absence of any contract to the contrary, an agent is entitled to retain goods, papers, and other property, whether moveable or immoveable, of the principal, received by him, until the amount due to himself for commission, disbursements, and services in respect of the same, has been paid or accounted for to him.

Agent's lien on principal's property.

PRINCIPAL'S DUTY TO AGENT.

Agent to be indemnified against consequences of lawful acts.

222. The employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him.

Illustrations.

(a.) B, at Singapore, under instructions from A, of Calcutta, contracts with C to deliver certain goods to him. A does not send the goods to B, and C sues B for breach of contract. B informs A of the suit, and A authorizes him to defend the suit. B defends the suit, and is compelled to pay damages and costs, and incurs expenses. A is liable to B for such damages, costs, and expenses.

(b.) B, a broker at Calcutta, by the orders of A, a merchant there, contracts with C for the purchase of 10 casks of oil for A. Afterwards A refuses to receive the oil, and C sues B. B informs A, who repudiates the contract altogether. B defends, but unsuccessfully, and has to pay damages and costs, and incurs expenses. A is liable to B for such damages, costs, and expenses.

223. Where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it cause an injury to the rights of third persons.

Agent to be indemnified against consequences of acts done in good faith.

Illustrations.

(a.) A, a decree-holder, and entitled to execution of B's goods, requires the officer of the Court to seize certain goods, representing them to be the goods of B. The officer seizes the goods, and is sued by C, the true owner of the goods. A is liable to indemnify the officer for the sum which he is compelled to pay to C, in consequence of obeying A's directions.

(b.) B, at the request of A, sells goods in the possession of A, but which A had no right to dispose of. B does not know this, and hands over the proceeds of the sale to A. Afterwards C, the true owner of the goods, sues B, and recovers the value of the goods and costs. A is liable to indemnify B for what he has been compelled to pay to C, and for B's own expenses.

224. Where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise, to indemnify him against the consequences of that act.

Non-liability of employer of agent to do a criminal act.

Illustrations.

(a.) A employs B to beat C, and agrees to indemnify him against all consequences of the act. B thereupon beats C, and has to pay damages to C for so doing. A is not liable to indemnify B for those damages.

(b.) B, the proprietor of a newspaper, publishes, at A's request, a libel upon C in the paper, and A agrees to indemnify B against the consequences of the publication, and all costs and damages of any action in respect thereof. B is sued by C, and has to pay damages, and also incurs expenses. A is not liable to B upon the indemnity.

Compensation to agent for injury caused by principal's neglect.

225. The principal must make compensation to his agent in respect of injury caused to such agent by the principal's neglect or want of skill.

Illustration.

A employs B as a bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskilfully put up, and B is in consequence hurt. A must make compensation to B.

EFFECT OF AGENCY ON CONTRACTS WITH THIRD PERSONS.

226. Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences, as if the contracts had been entered into and the acts done by the principal in person.

Enforcement and consequences of agent's contracts.

Illustrations.

(a.) A buys goods from B, knowing that he is an agent for their sale, but not knowing who is the principal. B's principal is the person entitled to claim from A the price of the goods, and A cannot, in a suit by the principal, set off against that claim a debt due to himself from B.

(b.) A, being B's agent, with authority to receive money on his behalf, receives from C a sum of money due to B. C is discharged of his obligation to pay the sum in question to B.

227. When an agent does more than he is authorized to do, and when the part of what he does, which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal.

Principal how far bound when agent exceeds authority.

Illustrations.

A, being owner of a ship and cargo, authorizes B to procure an insurance for 4,000 rupees on the ship. B procures a policy for 4,000 rupees on the ship, and another for the like sum on the cargo. A is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.

228. Where an agent does more than he is authorized to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction.

Principal not bound when excess of agent's authority is not separable.

Illustration.

A authorizes B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of 6,000 rupees. A may repudiate the whole transaction.

229. Any notice given to or information obtained by the agent, provided Consequences of notice it be given or obtained in the course of the business given to agent. transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequence as if it had been given to or obtained by the principal.

Illustrations.

(a.) A is employed by B to buy from C certain goods, of which C is the apparent owner, and buys them accordingly. In the course of the treaty for the sale, A learns that the goods really belonged to D, but B is ignorant of that fact. B is not entitled to set-off a debt owing to him from C against the price of the goods.

(b.) A is employed by B to buy from C goods of which C is the apparent owner. A was, before he was so employed, a servant of C, and then learnt that the goods really belonged to D, but B is ignorant of that fact. In spite of the knowledge of his agent, B may set-off against the price of the goods a debt owing to him from C.

Agent cannot personally enforce, nor be bound by, contracts on behalf of principal.

Presumption of contract to contrary.

230. In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Such a contract shall be presumed to exist in the following cases:—

(1.) Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad:

(2.) Where the agent does not disclose the name of his principal:

(3.) Where the principal, though disclosed, cannot be sued.

231. If an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract; but the other contracting party has, as against the principal, the same rights as he would have had as against the agent if the agent had been principal.

If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfil the contract, if he can show that, if he had known who was the principal in the contract, or if he had known that the agent was not a principal, he would not have entered into the contract.

232. Where one man makes a contract with another, neither knowing nor having reasonable ground to suspect that the other is an agent, the principal, if he requires the performance of the contract, can only obtain such performance subject to the rights and obligations subsisting between the agent and the other party to the contract.

Illustration.

A, who owes 500 rupees to B, sells 1,000 rupees' worth of rice to B. A is acting as agent for C in the transaction, but B has no knowledge nor reasonable ground of suspicion that such is the case. C cannot compel B to take the rice without allowing him to set-off A's debt.

233. In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both with agent personally liable. of them, liable.

Illustration.

A enters into a contract with B to sell him 100 bales of cotton, and afterwards discovers that B was acting as agent for C. A may sue either B or C, or both, for the price of the cotton.

234. When a person who has made a contract with an agent induces the agent to act upon the belief that the principal only will be held liable, or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable the agent or principal respectively.

Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable.

235. A person untruly representing himself to be the authorized agent of another, and thereby inducing a third person to deal with him as such agent, is liable, if his alleged employer does not ratify his acts, to make compensation to the other in respect of any loss or damage which he has incurred by so dealing.

Liability of pretended agent.

236. A person, with whom a contract has been entered into in the character of agent, is not entitled to require the performance of it, if he was in reality acting, not as agent, but on his own account.

Person falsely contracting as agent, not entitled to performance.

237. When an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations if he has by his words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agent's authority.

Liability of principal inducing belief that agent's unauthorized acts were authorized.

Illustrations.

(a.) A consigns goods to B for sale, and gives him instructions not to sell under a fixed price. C, being ignorant of B's instructions, enters into a contract with B to buy the goods at a price lower than the reserved price. A is bound by the contract.

(b.) A entrusts B with negotiable instruments endorsed in blank. B sells them to C in violation of private orders from A. The sale is good.

238. Misrepresentations made, or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made or committed by the principals; but misrepresentations made, or frauds committed, by agents, in matters which do not fall within their authority, do not affect their principals.

Effect on agreement of misrepresentation or fraud by agent.

Illustrations.

(a.) A, being B's agent for the sale of goods, induces C to buy them by a misrepresentation, which he was not authorized by B to make. The contract is voidable, as between B and C, at the option of C.

(b.) A, the captain of B's ship, signs bills of lading without having received on board the goods mentioned therein. The bills of lading are void as between B and the pretended consignee.

CHAPTER XI.

OF PARTNERSHIP.

239. 'Partnership' is the relation which subsists between persons who have agreed to combine their property, labour, or skill in some business, and to share the profits thereof between them.

Partnership defined.

'Firm' defined.

Persons who have entered into partnership with one another are called collectively a 'firm.'

Illustrations.

(a.) A and B buy 100 bales of cotton, which they agree to sell for their joint account. A and B are partners in respect of such cotton.

(b.) A and B buy 100 bales of cotton, agreeing to share it between them. A and B are not partners.

(c.) A agrees with B, a goldsmith, to buy and furnish gold to B, to be worked up by him and sold, and that they shall share in the resulting profit or loss. A and B are partners.

(d.) A and B agree to work together as carpenters, but that A shall receive all profits, and shall pay wages to B. A and B are not partners.

(e.) A and B are joint owners of a ship. This circumstance does not make them partners.

240. A loan to a person engaged or about to engage in any trade or undertaking, upon a contract with such person that the

Lender not a partner by advancing money for share of profits.

lender shall receive interest at a rate varying with the profits, or that he shall receive a share of the profits, does not, of itself, constitute the lender a partner, or render him responsible as such.

Property left in business by retiring partner or deceased partner's representative.

241. In the absence of any contract to the contrary, property left by a retiring partner, or the representative of a deceased partner, to be used in the business, is to be considered a loan within the meaning of the last preceding section.

242. No contract for the remuneration of a servant or agent of any person, engaged in any trade or undertaking, by a share

Servant or agent remunerated by share of profits, not a partner.

of the profits of such trade or undertaking, shall, of itself, render such servant or agent responsible as a partner therein, nor give him the rights of a partner.

243. No person, being a widow or child of a deceased partner of a trader, and receiving, by way of annuity, a proportion

Widow or child of deceased partner receiving annuity out of profits, not a partner.

of the profits made by such trader in his business, shall, by reason only of such receipt, be deemed to be a partner of such trader, or be subject to any liabilities incurred by him.

244. No person receiving, by way of annuity or otherwise, a portion of

Person receiving portion of profits for sale of good-will, not a partner.

the profits of any business, in consideration of the sale by him of the good-will of such business, shall, by reason only of such receipt, be deemed to be a partner of the person carrying on such business, or be subject to his liabilities.

245. A person who has, by words spoken or written, or by his conduct,

Responsibility of person leading another to believe him a partner.

led another to believe that he is a partner in a particular firm, is responsible to him as a partner in such firm.

Liability of person permitting himself to be represented as a partner.

246. Any one consenting to allow himself to be represented as a partner is liable, as such, to third persons who, on the faith thereof, give credit to the partnership.

247. A person who is under the age of majority according to the law to which he is subject may be admitted to the benefits of partnership, but cannot be made personally liable for any obligation of the firm; but the share of such minor in the property of the firm is liable for the obligations of the firm.

248. A person who has been admitted to the benefits of partnership under the age of majority becomes, on attaining that age, liable for all obligations incurred by the partnership since he was so admitted, unless he gives public notice within a reasonable time of his repudiation of the partnership.

249. Every partner is liable for all debts and obligations incurred while he is a partner in the usual course of business by or on behalf of the partnership; but a person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of such firm for any thing done before he became a partner.

250. Every partner is liable to make compensation to third persons in respect of loss or damage arising from the neglect or fraud of any partner in the management of the business of the firm.

251. Each partner, who does any act necessary for or usually done in carrying on the business of such a partnership as that of which he is a member, binds his co-partners to the same extent as if he were their agent duly appointed for that purpose.

Exception.—If it has been agreed between the partners that any restriction shall be placed upon the power of any one of them, no act done in contravention of such agreement shall bind the firm with respect to persons having notice of such agreement.

Illustrations.

(a.) A and B trade in partnership, A residing in England, and B in India. A draws a bill of exchange in the name of the firm. B has no notice of the bill, nor is he at all interested in the transaction. The firm is liable on the bill, provided the holder did not know of the circumstances under which the bill was drawn.

(b.) A, being one of a firm of solicitors and attorneys, draws a bill of exchange in the name of the firm without authority. The other partners are not liable on the bill.

(c.) A and B carry on business in partnership as bankers. A sum of money is received by A on behalf of the firm. A does not inform B of such receipt, and afterwards A appropriates the money to his own use. The partnership is liable to make good the money.

(d.) A and B are partners. A, with the intention of cheating B, goes to a shop, and purchases articles on behalf of the firm, such as might be used in the ordinary course of the partnership business, and converts them to his own separate use, there being no collusion between him and the seller. The firm is liable for the price of the goods.

252. Where partners have by contract regulated and defined, as between themselves, their rights and obligations, such contract can be annulled or altered only by consent of all of them, which consent must either be expressed or be implied from a uniform course of dealing.

Illustration.

A, B, and C, intending to enter into partnership, execute written articles of agreement, by which it is stipulated that the net profits arising from the partnership business shall be

equally divided between them. Afterwards they carry on the partnership business for many years, A receiving one-half of the nett profits, and the other half being divided equally between B and C. All parties know of and acquiesce in this arrangement. This course of dealing supersedes the provision in the articles as to the division of profits.

Rules determining partners' mutual relations, where no contract to contrary.

253. In the absence of any contract to the contrary, the relations of partners to each other are determined by the following rules :—

- (1.) All partners are joint owners of all property originally brought into the partnership stock, or brought with money belonging to the partnership, or acquired for purposes of the partnership business. All such property is called partnership property. The share of each partner in the partnership property is the value of his original contribution, increased or diminished by his share of profit or loss :
- (2.) All partners are entitled to share equally in the profits of the partnership business, and must contribute equally towards the losses sustained by the partnership :
- (3.) Each partner has a right to take part in the management of the partnership business :
- (4.) Each partner is bound to attend diligently to the business of the partnership, and is not entitled to any remuneration for acting in such business :
- (5.) When differences arise as to ordinary matters connected with the partnership business, the decision shall be according to the opinion of the majority of the partners ; but no change in the nature of the business of the partnership can be made, except with the consent of all the partners :
- (6.) No person can introduce a new partner into a firm without the consent of all the partners :
- (7.) If, from any cause whatsoever, any member of a partnership ceases to be so, the partnership is dissolved as between all the other members :
- (8.) Unless the partnership has been entered into for a fixed term, any partner may retire from it at any time :
- (9.) Where a partnership has been entered into for a fixed term, no partner can, during such term, retire, except with the consent of all the partners, nor can he be expelled by his partners for any cause whatever, except by order of Court :
- (10.) Partnerships, whether entered into for a fixed term or not, are dissolved by the death of any partner.

When Court may dissolve partnership.

254. At the suit of a partner the Court may dissolve the partnership in the following cases :—

- (1.) When a partner becomes of unsound mind :
- (2.) When a partner, other than the partner suing, has been adjudicated an insolvent under any law relating to insolvent debtors :
- (3.) When a partner, other than the partner suing, has done any act by which the whole interest of such partner is legally transferred to a third person :

- (4.) When any partner becomes incapable of performing his part of the partnership contract :
- (5.) When a partner, other than the partner suing, is guilty of gross misconduct in the affairs of the partnership or towards his partners :
- (6.) When the business of the partnership can only be carried on at a loss.

Dissolution of partnership
by prohibition of business.

255. A partnership is in all cases dissolved by its business being prohibited by law.

256. If a partnership, entered into for a fixed term, be continued after such term has expired, the rights and obligations of the partners will, in the absence of any agreement to the contrary, remain the same as they were at the expiration of the term, so far as such rights and obligations can be applied to a partnership dissolvable at the will of any partner.

Rights and obligations of
partners in partnership con-
tinued after expiry of term
for which it was entered
into.

257. Partners are bound to carry on the business of the partnership for the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

Account to firm of benefit
derived from transaction
affecting partnership.

258. A partner must account to the firm for any benefit derived from a transaction affecting the partnership.

Illustrations.

(a.) A, B, and C, are partners in trade. C, without the knowledge of A and B, obtains for his own sole benefit a lease of the house in which the partnership business is carried on: A and B are entitled to participate, if they please, in the benefit of the lease.

(b.) A, B, and C, carry on business together in partnership as merchants trading between Bombay and London. D, a merchant in London, to whom they make their consignments, secretly allows C a share of the commission which he receives upon such consignments, in consideration of C's using his influence to obtain the consignments for him. C is liable to account to the firm for the money so received by him.

259. If a partner, without the knowledge and consent of the other partners, carries on any business competing or interfering with that of the firm, he must account to the firm for all profits made in such business, and must make compensation to the firm for any loss occasioned thereby.

260. A continuing guarantee, given either to a firm or to a third person, in respect of the transactions of a firm, is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or in respect of the transactions of which, such guarantee was given.

Non-liability of deceased
partner's estate for subse-
quent obligations.

261. The estate of a partner who has died is not, in the absence of an express agreement, liable in respect of any obligation incurred by the firm after his death.

262. Where there are joint debts due from the partnership, and also separate debts due from any partner, the partnership property must be applied in the first instance in payment of the debts of the firm, and if there is any surplus, then the share of each partner must be applied in payment of his separate debts or paid to him. The separate property of any partner must be applied first in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm.

Continuance of partner's rights and obligations after dissolution.

263. After a dissolution of partnership, the rights and obligations of the partners continue in all things necessary for winding-up the business of the partnership.

264. Persons dealing with a firm will not be affected by a dissolution of which no public notice has been given, unless they themselves had notice of such dissolution.

265. In the absence of any contract to the contrary, after the termination of a partnership, each partner or his representatives may apply to the Court to wind up the business of the firm, to provide for the payment of its debts, and to distribute the surplus according to the shares of the partners respectively.

Explanation.—The Court in this section means a Court not inferior to the Court of a District Judge within the local limits of whose jurisdiction the place or principal place of business of the firm is situated.

Limited-liability partnerships, incorporated partnerships, and joint-stock companies.

266. Extraordinary partnerships, such as partnerships with limited liability, incorporated partnerships, and joint-stock companies, shall be regulated by the law for the time being in force relating thereto.

SCHEDULE.

ENACTMENTS REPEALED.

Statutes.

| No. and year of Statute. | TITLE. | Extent of repeal. |
|-----------------------------|--|------------------------------|
| Stat. 29 Car. 2, cap. 3. | An Act for the prevention of Frauds and Perjuries. | Sections 1, 2, 3, 4, and 17. |
| Stat. 11 & 12 Vic., cap. 21 | To consolidate and amend the law relating to insolvent debtors in India. | Section 42. |

SCHEDULE—continued.

Acts.

| No. and year of Act. | TITLE. | Extent of repeal. |
|-------------------------|--|----------------------|
| Act XIII of 1840 ... | An Act for the amendment of the law regarding factors, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Stat. 4 Geo. iv, c. 83, as altered and amended by the Stat. 6 Geo. iv, c. 94. | The whole. |
| Act XIV of 1840 ... | An Act for rendering a written memorandum necessary to the validity of certain promises and engagements, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Stat. 9 Geo. iv, c. 14. | The whole. |
| Act XX of 1844 ... | An Act to amend the law relating to Advances <i>bonâ-fide</i> made to Agents intrusted with goods, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Stat. 5 & 6 Vic., c. 39, as altered by this Act. | The whole. |
| Act XXI of 1848 ... | An Act for avoiding Wagers ... | The whole. |
| Act V of 1866 ... | An Act to provide a summary procedure on bills of exchange, and to amend in certain respects the commercial law of British India. | Sections 9 & 10. |
| Act XV of 1866 ... | An Act to amend the law of Partnership in India. | The whole. |
| Act VIII of 1867 ... | An Act to amend the law relating to Horse-racing in India. | The whole. |

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THE INDIAN OATHS' ACT.

No. X of 1873.

[Received the Governor-General's assent on the 8th April 1873.]

AN ACT TO CONSOLIDATE THE LAW RELATING TO JUDICIAL OATHS, AND FOR OTHER PURPOSES.

WHEREAS it is expedient to consolidate the law relating to judicial oaths, affirmations, and declarations, and to repeal the law relating to official oaths, affirmations, and declarations; It is hereby enacted as follows:—

I.—PRELIMINARY.

Short title.

1. This Act may be called "The Indian Oaths' Act, 1873:"

It extends to the whole of British India, and, so far as regards subjects of Her Majesty, to the territories of Native Princes and States in alliance with Her Majesty;

Commencement. And it shall come into force on the first day of May 1873.

2. [Repealed by Act XII. of 1873.]

3. Nothing herein contained applies to proceedings before Courts Martial, or to oaths, affirmations, or declarations prescribed by any law which, under the provisions of the Indian Councils' Act, 1861, the Governor-General in Council has not power to repeal.

II.—AUTHORITY TO ADMINISTER OATHS AND AFFIRMATIONS.

4. The following Courts and persons are authorized to administer, by themselves or by an officer empowered by them in this behalf, oaths and affirmations in discharge of the duties or in exercise of the powers imposed or conferred upon them respectively by law:—

(a.) All Courts and persons having by law or consent of parties authority to receive evidence;

(b.) The Commanding Officer of any military station occupied by troops in the service of Her Majesty: provided

(1) that the oath or affirmation be administered within the limits of the station, and

(2) that the oath or affirmation be such as a Justice of the Peace is competent to administer in British India.

III.—PERSONS BY WHOM OATHS OR AFFIRMATIONS MUST BE MADE.

Oaths or affirmations to be made by—

5. Oaths or affirmations shall be made by the following persons:—

(a) all witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any Court or person having by law or consent of parties authority to examine such persons or to receive evidence:

interpreters:

(b) interpreters of questions put to, and evidence given by, witnesses: and

jurors.

(c) jurors.

Nothing herein contained shall render it lawful to administer, in a criminal proceeding, an oath or affirmation to the accused person, or necessary to administer to the official interpreter of any Court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties.

6. Where the witness, interpreter, or juror, is a Hindu or Muhammadan, Affirmation by natives or or has an objection to making an oath, he shall, by persons objecting to oaths. instead of making an oath, make an affirmation.

In every other case the witness, interpreter, or juror, shall make an oath.

IV.—FORMS OF OATHS AND AFFIRMATIONS.

7. All oaths and affirmations made under section five shall be administered according to such forms as the High Court may from time to time prescribe.*

And until any such forms are prescribed by the High Court, such oaths and affirmations shall be administered according to the forms now in use.

Explanation.—As regards oaths and affirmations administered in the Court of the Recorder of Rangoon and the Court of Small Causes of Rangoon, the Recorder of Rangoon shall be deemed to be the High Court within the meaning of this section.

8. If any party to, or witness in, any judicial proceeding, offers to give evidence on oath or solemn affirmation in any form common amongst, or held binding by, persons of the race or persuasion to which he belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the Court may, if it thinks fit, notwithstanding anything hereinbefore contained, tender such oath or affirmation to him.

9. If any party to any judicial proceeding offers to be bound by any such oath or solemn affirmation as is mentioned in section eight, if such oath or affirmation is made by the other party to, or by any witness in, such proceeding, the Court may, if it thinks fit, ask such party or witness, or cause him to be asked, whether or not he will make the oath or affirmation:

Provided that no party or witness shall be compelled to attend personally in Court solely for the purpose of answering such question.

* *Calcutta Gazette*, August 20, 1873, p. 984; *N. W. P. Gazette*, May 3, 1873, p. 604; *Panjab Gazette*, May 15, 1873, part iii, p. 209.

10. If such party or witness agrees to make such oath or affirmation, Administration of oath if the Court may proceed to administer it, or if it is accepted. of such a nature that it may be more conveniently made out of Court, the Court may issue a commission to any person to administer it, and authorize him to take the evidence of the person to be sworn or affirmed, and return it to the Court.

Evidence conclusive as against person offering to be bound.

11. The evidence so given shall, as against the person who offered to be bound as aforesaid, be conclusive proof of the matter stated.

12. If the party or witness refuses to make the oath or solemn affirmation referred to in section eight, he shall not be compelled to make it, but the Court shall record, as part of the proceedings, the nature of the oath or affirmation proposed, the facts that he was asked whether he would make it, and that he refused it, together with any reason which he may assign for his refusal.

V.—MISCELLANEOUS.

13. No omission* to take any oath or make any affirmation, no substitution of any one for any other of them, and no irregularity whatever in the form in which any one of them is administered, shall invalidate any proceeding or render inadmissible any evidence whatever, in or in respect of which such omission, substitution, or irregularity took place, or shall affect the obligation of a witness to state the truth.

14. Every person giving evidence on any subject before any Court or person hereby authorized to administer oaths and bound to state the truth. affirmations shall be bound to state the truth on such subject.†

15. The Indian Penal Code, sections 178 and 181, shall be construed as if, after the word "oath," the words "or affirmation" were inserted.

16. Subject to the provisions of sections three and five, no person appointed to any office shall, before entering on the execution of the duties of his office, be required to make any oath, or to make or subscribe any affirmation or declaration whatever.

* This "includes any omission, and is not limited to accidental or negligent omissions." *Reg. v. Seva Bhogta*, 14 Beng. 294.

† Sec. Act XLV of 1860, sec. 191.

THE INDIAN MAJORITY ACT,

No. IX of 1875,

[Received the Governor-General's assent on the 2nd March 1875.]

AN ACT TO AMEND THE LAW RESPECTING THE AGE OF MAJORITY.

Preamble. WHEREAS, in the case of persons domiciled in British India, it is expedient to prolong the period of nonage, and to attain more uniformity and certainty respecting the age of majority than now exists; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Indian Majority Act, 1875."

Local extent. It extends to the whole of British India, and, so far as regards subjects of Her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty;

Commencement and operation.

and it shall come into force and have effect only on the expiration of three months from the passing thereof.

2. Nothing herein contained shall affect—

(a) the capacity of any person to act in the following matters (namely),—
Marriage, Dower, Divorce, and Adoption;

(b) the religion or religious rites and usages of any class of Her Majesty's subjects in India; or

(c) the capacity of any person who before this Act comes into force has attained majority under the law applicable to him.

3. Subject as aforesaid, every minor of whose person or property a guardian has been or shall be appointed by any Court

Age of majority of persons domiciled in British India.

of Justice, and every minor under the jurisdiction of any Court of Wards, shall, notwithstanding anything contained in the Indian Succession Act (No. X of 1865) or in any other enactment, be deemed to have attained his majority when he shall have completed his age of twenty-one years and not before.

Subject as aforesaid, every other person domiciled in British India shall be deemed to have attained his majority when he shall have completed his age of eighteen years and not before.

4. In computing the age of any person, the day on which he was born

Age of majority how computed. is to be included as a whole day, and he shall be deemed to have attained majority, if he falls within

the first paragraph of section three, at the beginning of the twenty-first anni-

versary of that day, and if he falls within the second paragraph of section three, at the beginning of the eighteenth anniversary of that day.

Illustrations.

(a.) Z is born in British India on the first day of January, 1850, and has a British Indian domicile. A guardian of his person is appointed by a Court of Justice. Z attains majority at the first moment of the first day of January 1871.

(b.) Z is born in British India on the twenty-ninth day of February, 1852, and has a British Indian domicile. A guardian of his property is appointed by a Court of Justice. Z attains majority at the first moment of the twenty-eighth day of February, 1873.

(c.) Z is born on the first day of January, 1850. He acquires a domicile in British India. No guardian is appointed of his person or property by any Court of Justice, nor is he under the jurisdiction of any Court of Wards. Z attains majority at the first moment of the first day of January, 1868.

THE SPECIFIC RELIEF ACT,

No. I OF 1877,

[Received the Governor-General's assent on the 7th February 1877.]

AN ACT TO DEFINE AND AMEND THE LAW RELATING TO CERTAIN KINDS OF SPECIFIC RELIEF.

WHEREAS it is expedient to define and amend the law relating to certain kinds of specific relief obtainable in civil suits ; it is hereby enacted as follows .

Preamble.

PART I.

PRELIMINARY.

- Short title. 1. This Act may be called "The Specific Relief Act, 1877."
- Local extent. It extends to the whole of British India, except the Scheduled Districts as defined in Act No. XIV of 1874.
- Commencement. And it shall come into force on the first day of May 1877.
- Repeal of enactments. 2. On and from that day the Acts specified in the schedule hereto annexed shall be repealed to the extent mentioned in its third column.
- Interpretation-clause. 3. In this Act, unless there be something repugnant in the subject or context,—
- 'obligation.' 'obligation' includes every duty enforceable by law :
- 'trust.' 'trust' includes every species of express, implied, or constructive fiduciary ownership :
- 'trustee.' 'trustee' includes every person holding, expressly, by implication, or constructively, a fiduciary character ::

Illustrations.

(a.) Z bequeaths land to A, 'not doubting that he will pay thereout an annuity of Rs. 1,000 to B for his life.' A accepts the bequest. A is a trustee, within the meaning of this Act, for B, to the extent of the annuity.

(b.) A is the legal, medical, or spiritual adviser of B. By availing himself of his situation as such adviser, A gains some pecuniary advantage which might otherwise have accrued to B. A is a trustee, for B, within the meaning of this Act, of such advantage.

(c.) A, being B's banker, discloses for his own purpose the state of B's account. A is a trustee, within the meaning of this Act, for B, of the benefit gained by him by means of disclosure.

(d.) A, the mortgagee of certain leaseholds, renews the lease in his own name. A is a trustee, within the meaning of this Act, of the renewed lease, for those interested in the original lease.

(e.) A, one of several partners, is employed to purchase goods for the firm. A, unknown to his co-partners, supplies them, at the market-price, with goods previously bought by himself when the price was lower, and thus makes a considerable profit. A is a trustee, for his co-partners, within the meaning of this Act, of the profit so made.

(f.) A, the manager of B's indigo-factory, becomes agent for C, a vendor of indigo-seed, and receives, without B's assent, commission on the seed purchased from C for the factory. A is a trustee, within the meaning of this Act, for B, of the commission so received.

(g.) A buys certain land with notice that B has already contracted to buy it. A is a trustee, within the meaning of this Act, for B, of the land so bought.

(h.) A buys land from B, having notice that C is in occupation of the land. A omits to make any inquiry as to the nature of C's interest therein. A is a trustee, within the meaning of this Act, for C, to the extent of that interest.

'settlement' means any instrument (other than a will or codicil as defined by the Indian Succession Act) whereby the destination or devolution of successive interests in moveable or immoveable property is disposed of or is agreed to be disposed of:

And all words occurring in this Act, which are defined in the Indian Contract Act, 1872, shall be deemed to have the meanings respectively assigned to them by that Act.

Savings.

4. Except where it is herein otherwise expressly enacted, nothing in this Act shall be deemed—

(a) to give any right to relief in respect of any agreement which is not a contract ;

(b) to deprive any person of any right to relief, other than specific performance, which he may have under any contract ; or

(c) to affect the operation of the Indian Registration Act on documents.

Specific relief how given.

5. Specific relief is given—

(a) by taking possession of certain property and delivering it to a claimant ;

(b) by ordering a party to do the very act which he is under an obligation to do ;

(c) by preventing a party from doing that which he is under an obligation not to do ;

(d) by determining and declaring the rights of parties otherwise than by an award of compensation ; or

(e) by appointing a Receiver.

Preventive relief.

6. Specific relief granted under clause c of section 5 is called preventive relief.

Relief not granted to enforce penal law.

7. Specific relief cannot be granted for the mere purpose of enforcing a penal law.

PART II. OF SPECIFIC RELIEF.

CHAPTER I.

OF RECOVERING POSSESSION OF PROPERTY.

(a.) *Possession of Immoveable Property.*

Recovery of specific im-
moveable property.

8. A person entitled to the possession of specific immoveable property may recover it in the manner prescribed by the Code of Civil Procedure.

9. If any person is dispossessed without his consent of immoveable property otherwise than in due course of law, he or any person claiming through him may, by suit instituted within six months from the date of the dispossession, recover possession thereof, notwithstanding any other title that may be set up in such suit.

Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

No suit under this section shall be brought against the Government.

No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(b.) *Possession of Moveable Property.*

10. A person entitled to the possession of specific moveable property may recover the same in the manner prescribed by the Code of Civil Procedure.

Explanation 1.—A trustee may sue under this section for the possession of property to the beneficial interest in which the person for whom he is trustee is entitled.

Explanation 2.—A special or temporary right to the present possession of property is sufficient to support a suit under this section.

• • Illustrations.

(a.) A bequeaths land to B for his life, with remainder to C. A dies. B enters on the land, but C, without B's consent, obtains possession of the title-deeds. B may recover them from C.

(b.) A pledges certain jewels to B to secure a loan. B disposes of them before he is entitled to do so. A, without having paid or tendered the amount of the loan, sues B for possession of the jewels. The suit should be dismissed, as A is not entitled to their possession, whatever right he may have to secure their safe custody.

(c.) A receives a letter addressed to him by B. B gets back the letter without A's consent. A has such property therein as entitles him to recover it from B.

(d.) A deposits books and papers for safe custody with B. B loses them, and C finds them, but refuses to deliver them to B when demanded. B may recover them from C, subject to C's right, if any, under section 168 of the Indian Contract Act, 1872.

(e.) A, a warehouse-keeper, is charged with the delivery of certain goods to Z, which B takes out of A's possession. A may sue B for the goods.

11. Any person having the possession or control of a particular article of moveable property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession, in any of the following cases :—

(a) when the thing claimed is held by the defendant as the agent or trustee of the claimant ;

(b) when compensation in money would not afford the claimant adequate relief for the loss of the thing claimed ;

(c) when it would be extremely difficult to ascertain the actual damage caused by its loss ;

(d) when the possession of the thing claimed has been wrongfully transferred from the claimant.

Illustrations

of clause a.—A, proceeding to Europe, leaves his furniture in charge of B as his agent during his absence. B, without A's authority, pledges the furniture to C, and C, knowing that B had no right to pledge the furniture, advertises it for sale. C may be compelled to deliver the furniture to A, for he holds it as A's trustee.

of clause b.—Z has got possession of an idol belonging to A's family, and of which A is the proper custodian. Z may be compelled to deliver the idol to A.

of clause c.—A is entitled to a picture by a dead-painter and a pair of rare China vases. B has possession of them. The articles are of too special a character to bear an ascertainable market value. B may be compelled to deliver them to A.

CHAPTER II.

OF THE SPECIFIC PERFORMANCE OF CONTRACTS.

(a.) Contracts which may be specifically enforced.

12. Except as otherwise provided in this chapter, the specific performance

Cases in which specific performance enforceable. of any contract may, in the discretion of the Court, be enforced—

(a) when the act agreed to be done is in the performance, wholly or partly, of a trust ;

(b) when there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done ;

(c) when the act agreed to be done is such that pecuniary compensation for its non-performance would not afford adequate relief ; or

(d) when it is probable that pecuniary compensation cannot be got for the non-performance of the act agreed to be done. . .

Explanation.—Unless and until the contrary is proved, the Court shall presume that the breach of a contract to transfer immoveable property cannot be adequately relieved by compensation in money, and that the breach of a contract to transfer moveable property can be thus relieved.

Illustrations

of clause a.—A holds certain stock in trust for B. A wrongfully disposes of the stock. The law creates an obligation on A to restore the same quantity of stock to B, and B may enforce specific performance of this obligation.

of clause b.—A agrees to buy, and B agrees to sell, a picture by a dead-painter and two rare China vases. A may compel B specifically to perform this contract, for there is no standard for ascertaining the actual damage which would be caused by its non-performance.

of clause c.—A contracts with B to sell him a house for Rs. 1,000. B is entitled to a decree directing A to convey the house to him, he paying the purchase-money.

In consideration of being released from certain obligations imposed on it by its Act of Incorporation, a railway-company contract with Z to make an archway through their railway to connect lands of Z severed by the railway, to construct a road between certain specified points, to pay a certain annual sum towards the maintenance of this road, and also to construct a siding and a wharf as specified in the contract. Z is entitled to have this contract specifically enforced, for his interest in its performance cannot be adequately compensated for by money ; and the Court may appoint a proper person to superintend the construction of the archway, road, siding, and wharf.

A contracts to sell, and B contracts to buy, a certain number of railway-shares of a particular description. A refuses to complete the sale. B may compel A specifically to perform this agreement, for the shares are limited in number and not always to be had in the market, and their possession carries with it the status of a shareholder, which cannot otherwise be procured.

A contracts with B to paint a picture for B, who agrees to pay therefor Rs. 1,000. The picture is painted. B is entitled to have it delivered to him on payment or tender of the Rs. 1,000.

of clause d.—A transfers without endorsement, but for valuable consideration, a promissory note to B. A becomes insolvent, and C is appointed his assignee. B may compel C to endorse the note, for C has succeeded to A's liabilities, and a decree for pecuniary compensation for not endorsing the note would be fruitless.

13. Notwithstanding anything contained in section 56 of the Indian Contract Act, a contract is not wholly impossible of performance because a portion of its subject-matter, existing at its date, has ceased to exist at the time of the performance.

Illustrations.

(a.) A contracts to sell a house to B for a lakh of rupees. The day after the contract is made, the house is destroyed by a cyclone. B may be compelled to perform his part of the contract by paying the purchase-money.

(b.) In consideration of a sum of money payable by B, A contracts to grant an annuity to B for B's life. The day after the contract has been made, B is thrown from his horse and killed. B's representative may be compelled to pay the purchase-money.

14. Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only a small proportion to the whole in value, and admits of compensation in money, the Court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

Illustrations.

(a.) A contracts to sell to B a piece of land consisting of 100 bighás. It turns out that 98 bighás of the land belong to A, and the two remaining bighás to a stranger, who refuses to part with them. The two bighás are not necessary for the use or enjoyment of the 98 bighás, nor so important for such use or enjoyment that the loss of them may not be made good in money. A may be directed at the suit of B to convey to B the 98 bighás, and to make compensation to him for not conveying the two remaining bighás; or B may be directed, at the suit of A, to pay to A, on receiving the conveyance and possession of the land, the stipulated purchase-money, less a sum awarded as compensation for the deficiency.

(b.) In a contract for the sale and purchase of a house and lands for two lakhs of rupees, it is agreed that part of the furniture should be taken at a valuation. The Court may direct specific performance of the contract notwithstanding the parties are unable to agree as to the valuation of the furniture, and may either have the furniture valued in the suit and include it in the decree for specific performance, or may confine its decree to the house.

15. Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed forms a considerable portion of the whole, or unperformed is large, does not admit of compensation in money, he is not entitled to obtain a decree for specific performance. But the Court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, provided that the plaintiff relinquishes all claim to further performance, and all right to compensation, either for the deficiency, or for the loss or damage sustained by him through the default of the defendant.

Illustrations.

(a.) A contracts to sell to B a piece of land consisting of 100 bighás. It turns out that 50 bighás of the land belong to A, and the other 50 bighás to a stranger, who refuses to part with them. A cannot obtain a decree against B for the specific performance of the contract; but if B is willing to pay the price agreed upon, and to take the 50 bighás which belong to A, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree directing A to convey those 50 bighás to him on payment of the purchase-money.

(b.) A contracts to sell to B an estate with a house and garden for a lakh of rupees. The garden is important for the enjoyment of the house. It turns out that A is unable to convey the garden. A cannot obtain a decree against B for the specific performance of the contract; but if B is willing to pay the price agreed upon, and to take the estate and house without the garden, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree directing A to convey the house to him on payment of the purchase-money.

16. When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the Court may direct specific performance of the former part.

Bar in other cases of specific performance of part of contract.

17. The Court shall not direct the specific performance of a part of a contract except in cases coming under one or other of the three last preceding sections.

18. Where a person contracts to sell or let certain property, having only an imperfect title thereto, the purchaser or lessee (except as otherwise provided by this chapter) has the following rights :—

(a) if the vendor or lessor has, subsequently to the sale or lease, acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest;

(b) where the concurrence of other persons is necessary to validate the title, and they are bound to convey at the vendor's or lessor's request, the purchaser or lessee may compel him to procure such concurrence;

(c) where the vendor professes to sell unincumbered property, but the property is mortgaged for an amount not exceeding the purchase-money, and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage, and to obtain a conveyance from the mortgagee;

(d) where the vendor or lessor sues for specific performance of the contract, and the suit is dismissed on the ground of his imperfect title, the defendant has a right to a return of his deposit (if any) with interest thereon, to his costs of the suit, and to a lien for such deposit, interest, and costs on the interest of the vendor or lessor in the property agreed to be sold or let.

19. Any person suing for the specific performance of a contract may also ask for compensation for its breach, either in addition to, or in substitution for, such performance.

If in any such suit the Court decides that specific performance ought not to be granted, but there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him compensation accordingly.

If in any such suit the Court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that

some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

Compensation awarded under this section may be assessed in such manner as the Court may direct.

Explanation.—The circumstance that the contract has become incapable of specific performance does not preclude the Court from exercising the jurisdiction conferred by this section.

Illustrations

of the second paragraph :—A contracts to sell a hundred maunds of rice to B. B brings a suit to compel A to perform the contract or to pay compensation. The Court is of opinion that A has made a valid contract, and broken it, without excuse, to the injury of B, but that specific performance is not the proper remedy. It shall award to B such compensation as it deems just.

of the third paragraph :—A contracts with B to sell him a house for Rs. 1,000, the price to be paid and the possession given on the 1st January 1877. A fails to perform his part of the contract, and B brings his suit for specific performance and compensation, which is decided in his favour on the 1st January 1878. The decree may, besides ordering specific performance, award to B compensation for any loss which he has sustained by A's refusal.

of the Explanation :—A, a purchaser, sues B, his vendor, for specific performance of a contract for the sale of a patent. Before the hearing of the suit, the patent expires. The Court may award A compensation for the non-performance of the contract, and may, if necessary, amend the plaint for that purpose.

A sues for the specific performance of a resolution passed by the directors of a public company, under which he was entitled to have a certain number of shares allotted to him, and for compensation for the non-performance of the resolution. All the shares had been allotted before the institution of the suit. The Court may, under this section, award A compensation for the non-performance.

20. A contract, otherwise proper to be specifically enforced, may be thus

Liquidation of damages enforced, though a sum be named in it as the amount not a bar to specific performance. to be paid in case of its breach, and the party in default is willing to pay the same.

Illustration.

A contracts to grant B an underlease of property held by A under C, and that he will apply to C for a license necessary to the validity of the underlease, and that, if the license is not procured, A will pay B Rs. 10,000. A refuses to apply for the license, and offers to pay B the Rs. 10,000. B is nevertheless entitled to have the contract specifically enforced if C consents to give the license.

(b.) *Contracts which cannot be specifically enforced.*

Contracts not specifically enforceable.

21. The following contracts cannot be specifically enforced :—

- (a) a contract for the non-performance of which compensation in money is an adequate relief ;
- (b) a contract which runs into such minute or numerous details, or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the Court cannot enforce specific performance of its material terms ;
- (c) a contract the terms of which the Court cannot find with reasonable certainty ;
- (d) a contract which is in its nature revocable ;
- (e) a contract made by trustees either in excess of their powers or in breach of their trust ;
- (f) a contract made by or on behalf of a corporation or public company created for special purposes, or by the promoters of such company, which is in excess of its powers ;

- (g) a contract the performance of which involves the performance of a continuous duty extending over a longer period than three years from its date;
- (h) a contract of which a material part of the subject-matter, supposed by both parties to exist, has, before it has been made, ceased to exist.

And, save as provided by the Code of Civil Procedure, no contract to refer a controversy to arbitration shall be specifically enforced; but if any person who has made such a contract, and has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.

Illustrations

to a.—A contracts to sell, and B contracts to buy, a lakh of rupees in the four per cent. loan of the Government of India :

A contracts to sell, and B contracts to buy, 40 chests of indigo at Rs 1,000. per chest :

In consideration of certain property having been transferred by A to B, B contracts to open a credit in A's favour to the extent of Rs. 10,000, and to honour A's drafts to that amount.

The above contracts cannot be specifically enforced, for in the first and the second both A and B, and in the third A, would be reimbursed by compensation in money.

to b.—A contracts to render personal service to B :

A contracts to employ B on personal service ;

A, an author, contracts with B, a publisher, to complete a literary work.

B cannot enforce specific performance of these contracts.

A contracts to buy B's business at the amount of a valuation to be made by two valuers, one to be named by A, and the other by B. A and B each name a valuer, but before the valuation is made, A instructs his valuer not to proceed :

By a charter-party entered into in Calcutta between A, the owner of a ship, and B, the charterer, it is agreed that the ship shall proceed to Rangoon, and there load a cargo of rice, and thence proceed to London, freight to be paid, one-third on arrival at Rangoon, and two-thirds on delivery of the cargo in London :

A lets land to B, and B contracts to cultivate it in a particular manner for three years next after the date of the lease :

A and B contract that, in consideration of annual advances to be made by A, B will, for three years next after the date of the contract, grow particular crops on the land in his possession, and deliver them to A when cut and ready for delivery :

A contracts with B that, in consideration of Rs. 1,000 to be paid to him by B, he will paint a picture for B :

A contracts with B to execute certain works which the Court cannot superintend :

A contracts to supply B with all the goods of a certain class which B may require :

A contracts with B to take from B a lease of a certain house for a specified term, at a specified rent, "if the drawing-room is handsomely decorated," even if it is held to have so much certainty that compensation can be recovered for its breach :

A contracts to marry B.

The above contracts cannot be specifically enforced.

to c.—A, the owner of a refreshment-room, contracts with B to give him accommodation there for the sale of his goods, and to furnish him with the necessary appliances. A refuses to perform his contract. The case is one for compensation, and not for specific performance, the amount and nature of the accommodation and appliances being undefined.

to d.—A and B contract to become partners in a certain business, the contract not specifying the duration of the proposed partnership. This contract cannot be specifically performed, for, if it were so performed, either A or B might at once dissolve the partnership.

to e.—A is a trustee of land with power to lease it for seven years. He enters into a contract with B to grant a lease of the land for seven years, with a covenant to renew the lease at the expiry of the term. This contract cannot be specifically enforced.

The directors of a company have power to sell the concern with the sanction of a general meeting of the shareholders. They contract to sell it without any such sanction. This contract cannot be specifically enforced.

Two trustees, A and B, empowered to sell trust-property worth a lakh of rupees, contract to sell it to C for Rs. 30,000. The contract is so disadvantageous as to be a breach of trust. C cannot enforce its specific performance.

The promoters of a company for working mines contract that the company, when formed, shall purchase certain mineral property. They take no proper precautions to ascertain the value of such property, and in fact agree to pay an extravagant price therefor. They also stipulate that the vendors shall give them a bonus out of the purchase-money. This contract cannot be specifically enforced.

to *f*.—A company, existing for the sole purpose of making and working a railway, contracts for the purchase of a piece of land for the purpose of erecting a cotton-mill thereon. This contract cannot be specifically enforced.

to *g*.—A contracts to let for twenty-one years to B the right to use such part of a certain railway made by A as was upon B's land, and that B should have a right of running carriages over the whole line on certain terms, and might require A to supply the necessary engine-power, and that A should, during the term, keep the whole railway in good repair. Specific performance of this contract must be refused to B.

to *h*.—A contracts to pay an annuity to B for the lives of C and D. It turns out that, at the date of the contract, C, though supposed by A and B to be alive, was dead. The contract cannot be specifically performed.

(c.) *Of the Discretion of the Court.*

22. The jurisdiction to decree specific performance is discretionary,

Discretion as to decreeing and the Court is not bound to grant such relief specific performance. merely because it is lawful to do so ; but the discretion of the Court is not arbitrary, but sound and reasonable, guided by judicial principles, and capable of correction by a Court of appeal.

The following are cases in which the Court may properly exercise a discretion not to decree specific performance :—

I. Where the circumstances under which the contract is made are such as to give the plaintiff an unfair advantage over the defendant, though there may be no fraud or misrepresentation on the plaintiff's part.

Illustrations.

(a.) A, a tenant for life of certain property, assigns his interest therein to B. C contracts to buy, and B contracts to sell, that interest. Before the contract is completed, A receives a mortal injury, from the effects of which he dies the day after the contract is executed. If B and C were equally ignorant or equally aware of the fact, B is entitled to specific performance of the contract.* If B knew the fact, and C did not, specific performance of the contract should be refused to B.

(b.) A contracts to sell to B the interest of C in certain stock-in-trade. It is stipulated that the sale shall stand good, even though it should turn out that C's interest is worth nothing. In fact, the value of C's interest depends on the result of certain partnership-accounts, on which he is heavily in debt to his partners. This indebtedness is known to A, but not to B. Specific performance of the contract should be refused to A.

(c.) A contracts to sell, and B contracts to buy, certain land. To protect the land from floods, it is necessary for its owner to maintain an expensive embankment. B does not know of this circumstance, and A conceals it from him. Specific performance of the contract should be refused to A.

(d.) A's property is put up to auction. B requests C, A's attorney, to bid for him. C does this inadvertently and in good faith. The persons present, seeing the vendor's attorney bidding, think that he is a mere puffer, and cease to compete. The lot is knocked down to B at a low price. Specific performance of the contract should be refused to B.

II. Where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff.

Illustrations.

(e.) A is entitled to some land under his father's will on condition that, if he sells it within twenty-five years, half the purchase-money shall go to B. A, forgetting the condi-

tion, contracts, before the expiration of the twenty-five years, to sell the land to C. Here the enforcement of the contract would operate so harshly on A that the Court will not compel its specific performance in favour of C.

(f.) A and B, trustees, join their beneficiary, C, in a contract to sell the trust-estate to D, and personally agree to exonerate the estate from heavy incumbrances to which it is subject. The purchase-money is not nearly enough to discharge those incumbrances, though at the date of the contract the vendors believed it to be sufficient. Specific performance of the contract should be refused to D.

(g.) A, the owner of an estate, contracts to sell it to B, and stipulates that he, A, shall not be obliged to define its boundary. The estate really comprises a valuable property not known to either to be part of it. Specific performance of the contract should be refused to B, unless he waives his claim to the unknown property.

(h.) A contracts with B to sell him certain land, and to make a road to it from a certain railway-station. It is found afterwards that A cannot make the road without exposing himself to litigation. Specific performance of the part of the contract relating to the road should be refused to B, even though it may be held that he is entitled to specific performance of the rest with compensation for loss of the road.

(i.) A, a lessee of mines, contracts with B, his lessor, that at any time during the continuance of the lease B may give notice of his desire to take the machinery and plant used in and about the mines, and that he shall have the articles specified in his notice delivered to him at a valuation on the expiry of the lease. Such a contract might be most injurious to the lessee's business, and specific performance of it should be refused to B.

(j.) A contracts to buy certain land from B. The contract is silent as to access to the land. No right of way to it can be shown to exist. Specific performance of the contract should be refused to B.

(k.) A contracts with B to buy from B's manufactory, and not elsewhere, all the goods of a certain class used by B in his trade. The Court cannot compel B to supply the goods, but if he does not supply them, A may be ruined, unless he is allowed to buy them elsewhere. Specific performance of the contract should be refused to B.

The following is a case in which the Court may properly exercise a discretion to decree specific performance :—

III. Where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

Illustration.

B sells land to a railway-company, who contract to execute certain works for his convenience. The company take the land and use it for their railway. Specific performance of the contract to execute the works should be decreed in favour of A.

(d.) For whom Contract may be specifically enforced.

Who may obtain specific performance.

23. Except as otherwise provided by this chapter, the specific performance of a contract may be obtained by—

(a) any party thereto ;

(b) the representative in interest, or the principal, of any party thereto : provided that, where the learning, skill, solvency, or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless where his part thereof has already been performed ;

(c) where the contract is a settlement on marriage, or a compromise of doubtful rights between members of the same family, any person beneficially entitled thereunder ;

(d) where the contract has been entered into by a tenant for life in due exercise of a power, the remainderman ;

(e) a reversioner in possession, where the agreement is a covenant entered into with his predecessor in title, and the reversioner is entitled to the benefit of such covenant;

(f) a reversioner in remainder, where the agreement is such a covenant, and the reversioner is entitled to the benefit thereof, and will sustain material injury by reason of its breach;

(g) when a public company has entered into a contract, and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation;

(h) when the promoters of a public company have, before its incorporation, entered into a contract for the purposes of the company, and such contract is warranted by the terms of the incorporation, the company.

(e.) From whom Contracts cannot be specifically enforced.

Personal bars to the relief.

24. Specific performance of a contract cannot be enforced in favour of a person—

(a) who could not recover compensation for its breach;

(b) who has become incapable of performing, or violates, any essential term of the contract that on his part remains to be performed;

(c) who has already chosen his remedy and obtained satisfaction for the alleged breach of contract;

(d) who, previously to the contract, had notice that a settlement of the subject-matter thereof (though not founded on any valuable consideration) had been made and was then in force.

Illustrations

to clause a.—A, in the character of agent for B, enters into an agreement with C to buy C's house. A is in reality acting, not as agent for B, but on his own account. A cannot enforce specific performance of this contract.

to clause b.—A contracts to sell B a house and to become tenant thereof for a term of fourteen years from the date of the sale at a specified yearly rent. A becomes insolvent. Neither he nor his assignee can enforce specific performance of the contract.

A contracts to sell B a house and garden in which there are ornamental trees, a material element in the value of the property as a residence. A, without B's consent, fells the trees. A cannot enforce specific performance of the contract.

A, holding land under a contract with B for a lease, commits waste, or treats the land in an unhusbandlike manner. A cannot enforce specific performance of the contract.

A contracts to let, and B contracts to take, an unfinished house, B contracting to finish the house, and the lease to contain covenants on the part of A to keep the house in repair. B finishes the house in a very defective manner; he cannot enforce the contract specifically, though A and B may sue each other for compensation for breach of it.

to clause c.—A contracts to let, and B contracts to take, a house for a specified term at a specified rent. B refuses to perform the contract. A thereupon sues for, and obtains, compensation for the breach. A cannot obtain specific performance of the contract.

Contracts to sell property by one who has no title, or who is a voluntary settler.

25. A contract for the sale or letting of property, whether moveable or immoveable, cannot be specifically enforced in favour of a vendor or lessor—

(a) who, knowing himself not to have any title to the property, has contracted to sell or let the same;

(b) who, though he entered into the contract believing that he had a good title to the property, cannot, at the time fixed by the parties or by the Court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt;

(c) whb, previous to entering into the contract, has made a settlement (though not founded on any valuable consideration) of the subject-matter of the contract.

Illustrations.

(a.) A, without C's authority, contracts to sell to B an estate which A knows to belong to C. A cannot enforce specific performance of this contract, even though C is willing to confirm it.

(b.) A bequeaths his land to trustees, declaring that they may sell it with the consent in writing of B. B gives a general prospective assent in writing to any sale which the trustees may make. The trustees then enter into a contract with C to sell him the land. C refuses to carry out the contract. The trustees cannot specifically enforce this contract, as, in the absence of B's consent to the particular sale to C, the title which they can give C is, as the law stands, not free from reasonable doubt.

(c.) A, being in possession of certain land, contracts to sell it to Z. On enquiry it turns out that A claims the land as heir of B, who left the country several years before, and is generally believed to be dead, but of whose death there is no sufficient proof. A cannot compel Z specifically to perform the contract.

(d.) A, out of natural love and affection, makes a settlement of certain property on his brothers and their issue, and afterwards enters into a contract to sell the property to a stranger. A cannot enforce specific performance of this contract so as to override the settlement, and thus prejudice the interests of the persons claiming under it.

(f.) For whom Contracts cannot be specifically enforced except with a variation.

26. Where a plaintiff seeks specific performance of a contract in writing, Non-enforcement except to which the defendant sets up a variation, the with variation. plaintiff cannot obtain the performance sought, except with the variation so set up, in the following cases (namely):—

(a) where by fraud or mistake of fact the contract of which performance is sought is in terms different from that which the defendant supposed it to be when he entered into it ;

(b) where by fraud, mistake of fact, or surprise, the defendant entered into the contract under a reasonable misapprehension as to its effect as between himself and the plaintiff ;

(c) where the defendant, knowing the terms of the contract, and understanding its effect, has entered into it relying upon some misrepresentation by the plaintiff, or upon some stipulation on the plaintiff's part which adds to the contract, but which he refuses to fulfil ;

(d) where the object of the parties was to produce a certain legal result, which the contract as framed is not calculated to produce ;

(e) where the parties have, subsequently to the execution of the contract, contracted to vary it.

Illustrations.

(a.) A, B, and C, sign a writing by which they purport to contract each to enter into a bond to D for Rs. 1,000. In a suit by D, to make A, B, and C separately liable each to the extent of Rs. 1,000, they prove that the word 'each' was inserted by mistake ; that the intention was that they should give a joint bond for Rs. 1,000. D can obtain the performance sought only with the variation thus set up.

(b.) A sues B to compel specific performance of a contract in writing to buy a dwelling-house. B proves that he assumed that the contract included an adjoining yard, and the contract was so framed as to leave it doubtful whether the yard was so included or not. The Court will refuse to enforce the contract, except with the variation set up by B.

(c.) A contracts in writing to let to B a wharf, together with a strip of A's land delineated in a map. Before signing the contract, B proposed orally that he should be at liberty to substitute for the strip mentioned in the contract another strip of A's land of the

same dimensions, and to this A expressly assented. B then signed the written contract. A cannot obtain specific performance of the written contract, except with the variation set up by B.

(d.) A and B enter into negotiations for the purpose of securing land to B for his life, with remainder to his issue. They execute a contract the terms of which are found to confer an absolute ownership on B. The contract so framed cannot be specifically enforced.

(e.) A contracts in writing to let a house to B, for a certain term, at the rent of Rs. 100 per month, putting it first into tenable repair. The house turns out to be not worth repairing; so, with B's consent, A pulls it down, and erects a new house in its place: B contracting orally to pay rent at Rs. 120 per mensem. B then sues to enforce specific performance of the contract in writing. He cannot enforce it except with the variations made by the subsequent oral contract.

(g.) Against whom Contracts may be specifically enforced.

Relief against parties and persons claiming under them by subsequent title.

27. Except as otherwise provided by this chapter, specific performance of a contract may be enforced against—

- (a) either party thereto; •
- (b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;
- (c) any person claiming under a title which, though prior to the contract, and known to the plaintiff, might have been displaced by the defendant;
- (d) when a public company has entered into a contract, and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation;
- (e) when the promoters of a public company have, before its incorporation, entered into a contract, the company: provided that the company has ratified and adopted the contract, and the contract is warranted by the terms of the incorporation.

Illustrations

to clause b.—A contracts to convey certain land to B by a particular day. A dies intestate before that day without having conveyed the land. B may compel A's heir or other representative in interest to perform the contract specifically.

A contracts to sell certain land to B for Rs. 5,000. A afterwards conveys the land for Rs. 6,000 to C, who has notice of the original contract. B may enforce specific performance of the contract as against C.

A contracts to sell land to B for Rs. 5,000. B takes possession of the land. Afterwards A sells it to C for Rs. 6,000. C makes no enquiry of B relating to his interest in the land. B's possession is sufficient to affect C with notice of his interest, and he may enforce specific performance of the contract against C.

A contracts, in consideration of Rs. 1,000, to bequeath certain of his lands to B. Immediately after the contract A dies intestate, and C takes out administration to his estate. B may enforce specific performance of the contract against C.

A contracts to sell certain land to B. Before the completion of the contract A becomes a lunatic, and C is appointed his committee. B may specifically enforce the contract against C.

to clause c.—A, the tenant for life of an estate, with remainder to B, in due exercise of a power conferred by the settlement under which he is tenant for life, contracts to sell the estate to C, who has notice of the settlement. Before the sale is completed, A dies. C may enforce specific performance of the contract against B.

A and B are joint tenants of land, his undivided moiety of which either may alien in his lifetime, but which, subject to that right, devolves on the survivor. A contracts to sell his moiety to C, and dies. C may enforce specific performance of the contract against B.

(h.) Against whom Contracts cannot be specifically enforced.

What parties cannot be compelled to perform. **28.** Specific performance of a contract cannot be enforced against a party thereto in any of the following cases :—

(a) if the consideration to be received by him is so grossly inadequate, with reference to the state of things existing at the date of the contract, as to be either by itself or coupled with other circumstances evidence of fraud or of undue advantage taken by the plaintiff;

(b) if his assent was obtained by the misrepresentation (whether wilful or innocent), concealment, circumvention, or unfair practices, of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled;

(c) if his assent was given under the influence of mistake of fact, misapprehension, or surprise: Provided that, when the contract provides for compensation in case of mistake, compensation may be made for a mistake within the scope of such provision, and the contract may be specifically enforced in other respects if proper to be so enforced.

Illustrations

to clause c.—A, one of two executors, in the erroneous belief that he had the authority of his co-executor, enters into an agreement for the sale to B of his testator's property. B cannot insist on the sale being completed.

A directs an auctioneer to sell certain land. A afterwards revokes the auctioneer's authority as to 20 highls of this land, but the auctioneer inadvertently sells the whole to B, who has not notice of the revocation. B cannot enforce specific performance of the agreement.

(i.) The effect of dismissing a Suit for Specific Performance.

29. The dismissal of a suit for specific performance of a contract, or Bar of suit for breach after part thereof, shall bar the plaintiff's right to sue for dismissal. compensation for the breach of such contract or part, as the case may be.

(j.) Awards and Directions to execute Settlements.

Application of preceding sections to awards and testamentary directions to execute settlements.

30. The provisions of this chapter as to contracts shall, *mutatis mutandis*, apply to awards and to directions in a will or codicil to execute a particular settlement.

CHAPTER III.

OF THE RECTIFICATION OF INSTRUMENTS.

31. When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing does not truly express their intention, either party, or his representative in interest, may institute a suit to have the instrument rectified; and if the Court find it clearly proved that there has been fraud or mistake in framing the instrument, and ascertain the real intention of the parties in executing the same, the Court may, in its discretion, rectify the instrument so as to express that in-

tention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.

Illustrations.

(a.) A, intending to sell to B his house and one of three godowns adjacent to it, executes a conveyance prepared by B, in which, through B's fraud, all three godowns are included. Of the two godowns which were fraudulently included, B gives one to C, and lets the other to D for a rent, neither C nor D having any knowledge of the fraud. The conveyance may, as against B and C, be rectified so as to exclude from it the godown given to C; but it cannot be rectified so as to affect D's lease.

(b.) By a marriage-settlement, A, the father of B the intended wife, covenants with C, the intended husband, to pay to C, his executors, administrators, and assigns, during A's life, an annuity of Rs. 5 000. C dies insolvent, and the official assignee claims the annuity from A. The Court, on finding it clearly proved that the parties always intended that this annuity should be paid as a provision for B and her children, may rectify the settlement, and decree that the assignee has no right to any part of the annuity.

32. For the purpose of rectifying a contract in writing, the Court must be satisfied that all the parties thereto intended to make an equitable and conscientious agreement.

33. In rectifying a written instrument, the Court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the inquiry what the language of the instrument was intended to be.

34. A contract in writing may be first rectified, and then, if the plaintiff has so prayed in his plaint, and the Court thinks fit, specifically enforced.

Illustration.

A contracts in writing to pay his attorney, B, a fixed sum in lieu of costs. The contract contains mistakes as to the name and rights of the client, which, if construed strictly, would exclude B from all rights under it. B is entitled, if the Court thinks fit, to have it rectified, and to an order for payment of the sum, as if at the time of its execution it had expressed the intention of the parties.

CHAPTER IV.

OF THE RESCISSION OF CONTRACTS.

35. Any person interested in a contract in writing may sue to have it rescinded, and such rescission may be adjudged by the Court in any of the following cases, namely:—

- (a) where the contract is voidable or terminable by the plaintiff;
- (b) where the contract is unlawful for causes not apparent on its face, and the defendant is more to blame than the plaintiff;
- (c) where a decree for specific performance of a contract of sale, or of a contract to take as lease, has been made, and the purchaser or lessee makes default in payment of the purchase-money or other sums which the Court has ordered him to pay.

When the purchaser or lessee is in possession of the subject-matter, and the Court finds that such possession is wrongful, the Court may also order him to pay to the vendor or lessor the rents and profits, if any, received by him as such possessor.

In the same case, the Court may, by order in the suit in which the decree has been made and not complied with, rescind the contract, either so far as regards the party in default, or altogether, as the justice of the case may require.

Illustrations

to a.—A sells a field to B. There is a right of way over the field of which A has direct personal knowledge, but which he conceals from B. B is entitled to have the contract rescinded.

to b.—A, an attorney, induces his client B, a Hindu widow, to transfer property to him for the purpose of defrauding B's creditors. Here the parties are not equally in fault, and B is entitled to have the instrument of transfer rescinded.

36. Rescission of a contract in writing cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made.

37. A plaintiff instituting a suit for the specific performance of a contract in writing may pray in the alternative that, if the contract cannot be specifically enforced, it may be rescinded and delivered up to be cancelled; and the Court, if it refuses to enforce the contract specifically, may direct it to be rescinded and delivered up accordingly.

38. On adjudging the rescission of a contract, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

CHAPTER V.

OF THE CANCELLATION OF INSTRUMENTS.

39. Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable, and the Court may, in its discretion, so adjudge it, and order it to be delivered up and cancelled.

If the instrument has been registered under the Indian Registration Act, the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered, and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

Illustrations.

(a.) A, the owner of a ship, by fraudulently representing her to be seaworthy, induces B, an underwriter, to insure her. B may obtain the cancellation of the policy.

(b.) A conveys land to B, who bequeaths it to C, and dies. Thereupon D gets possession of the land, and produces a forged instrument, stating that the conveyance was made to B in trust for him. C may obtain the cancellation of the forged instrument.

(c.) A, representing that the tenants on his land were all at will, sells it to B, and conveys it to him by an instrument dated the 1st January 1877. Soon after that day, A fraudulently grants to C a lease of part of the lands, dated the 1st October 1876, and procures the lease to be registered under the Indian Registration Act. B may obtain the cancellation of this lease.

(d.) A agrees to sell and deliver a ship to B, to be paid for by B's acceptances of four bills of exchange, for sums amounting to Rs. 30,000, to be drawn by A on B. The bills are drawn and accepted, but the ship is not delivered according to the agreement. A sues B on one of the bills. B may obtain the cancellation of all the bills.

40. Where an instrument is evidence of different rights or different obligations, the Court may, in a proper case, cancel it in part, and allow it to stand for the residue.

What instruments may be partially cancelled.

Illustration.

A draws a bill on B, who endorses it to C, by whom it appears to be endorsed to D, who endorses it to E. C's endorsement is forged. A is entitled to have such endorsement cancelled, leaving the bill to stand in other respects.

Power to require party for whom instrument is cancelled to make compensation.

41. On adjudging the cancellation of an instrument, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

CHAPTER VI.

OF DECLARATORY DECREES.

42. Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may, in its discretion, make therein a declaration that he is so entitled, and the plaintiff need not, in such suit, ask for any further relief.

Discretion of Court as to declarations of status or right.

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Bar to such declaration.

Explanation.—A trustee of property is a person interested to deny a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

Illustrations.

(a.) A is lawfully in possession of certain land. The inhabitants of a neighbouring village claim a right of way across the land. A may sue for a declaration that they are not entitled to the right so claimed.

(b.) A bequeaths his property to B, C, and D, 'to be equally divided amongst all and each of them, if living at the time of my death, then amongst their surviving children.' No such children are in existence. In a suit against A's executor, the Court may declare whether B, C, and D, took the property absolutely, or only for their lives, and it may also declare the interests of the children before their rights are vested.

(c.) A covenants that, if he should at any time be entitled to property exceeding one lakh of rupees, he will settle it upon certain trusts. Before any such property accrues, or any persons entitled under the trusts are ascertained, he institutes a suit to obtain a declaration that the covenant is void for uncertainty. The Court may make the declaration.

(d.) A alienates to B property in which A has merely a life-interest. The alienation is invalid as against C, who is entitled as reversioner. The Court may, in a suit by C against A and B, declare that C is so entitled.

(e.) The widow of a sonless Hindu alienates part of the property of which she is in possession as such. The person presumptively entitled to possess the property if he survive her may, in a suit against the alienee, obtain a declaration that the alienation was made without legal necessity, and was therefore void beyond the widow's lifetime.

(f.) A Hindu widow in possession of property adopts a son to her deceased husband. The person presumptively entitled to possession of the property on her death without a son may, in a suit against the adopted son, obtain a declaration that the adoption was invalid.

(g.) A is in possession of certain property. B, alleging that he is the owner of the property, requires A to deliver it to him. A may obtain a declaration of his right to hold the property.

(A.) A bequeaths property to B for his life, with remainder to B's wife and her children, if any, by B, but if B die without any wife or children, to C. B has a putative wife, D, and children, but C denies that B and D were ever lawfully married. D and her children may, in B's lifetime, institute a suit against C, and obtain therein a declaration that they are truly the wife and children of B.

43. A declaration made under this chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees.

Illustration.

A, a Hindu, in a suit to which B, his alleged wife, and her mother, are defendants, seeks a declaration that his marriage was duly solemnized, and an order for the restitution of his conjugal rights. The Court makes the declaration and order. C, claiming that B is his wife, then sues A for the recovery of B. The declaration made in the former suit is not binding upon C.

CHAPTER VII.

OF THE APPOINTMENT OF RECEIVERS.

44. The appointment of a Receiver pending a suit is a matter resting in the discretion of the Court.

Appointment of receivers discretionary.

The mode and effect of his appointment and his rights, powers, duties, and liabilities, are regulated by the Code of Civil Procedure.

Reference to Code of Civil Procedure.

CHAPTER VIII.

OF THE ENFORCEMENT OF PUBLIC DUTIES.

45. Any of the High Courts of Judicature at Fort William, Madras, and Bombay, may make an order requiring any specific act to be done or forborne, within the local limits of its ordinary original civil jurisdiction, by any person holding a public office, whether of a permanent or a temporary nature, or by any corporation or inferior Court of Judicature: provided—

Power to order public servants and others to do certain specific acts.

(a) that an application for such order be made by some person whose property, franchise, or personal right would be injured by the forbearing or doing (as the case may be) of the said specific act;

(b) that such doing or forbearing is, under any law for the time being in force, clearly incumbent on such person or Court in his or its public character, or on such corporation in its corporate character;

(c) that in the opinion of the High Court such doing or forbearing is consonant to right and justice;

(d) that the applicant has no other specific and adequate legal remedy; and

(e) that the remedy given by the order applied for will be complete.

Nothing in this section shall be deemed to authorize any High Court—

Exemptions from such power.

(f) to make any order binding on the Secretary of State for India in Council, on the Governor-General in Council, on the Governor of Madras in Council, on the Governor of Bombay in Council, or on the Lieutenant-Governor of Bengal ;

(g) to make any order on any other servant of the Crown, as such, merely to enforce the satisfaction of a claim upon the Crown ; or

(h) to make any order which is otherwise expressly excluded by any law for the time being in force.

46. Every application under section 45 must be founded on an affidavit of the person injured, stating his right in the matter in question, his demand of justice, and the denial thereof ; and the High Court may, in its discretion, make the order applied for absolute in the first instance or refuse it, or grant a rule to show cause why the order applied for should not be made.

If, in the last case, the person, Court, or corporation complained of, shows no sufficient cause, the High Court may first make an order in the alternative, either to do or forbear the act mentioned in the order, or to signify some reason to the contrary, and make an answer thereto by such day as the High Court fixes in this behalf.

47. If the person, Court, or corporation, to whom or to which such order is directed, makes no answer, or makes an insufficient or a false answer, the High Court may then issue a peremptory order to do or forbear the act absolutely.

48. Every order under this chapter shall be executed, and may be appealed from, as if it were a decree made in the exercise of the ordinary original civil jurisdiction of the High Court.

49. The costs of all applications and orders under this chapter shall be in the discretion of the High Court.

50. Neither the High Court nor any Judge thereof shall hereafter issue any writ of *mandamus*.

51. Each of the said High Courts shall, as soon as conveniently may be, frame rules to regulate the procedure under this chapter ; and until such rules are framed, the practice of such Court as to applications for and grants of writs of *mandamus* shall apply, so far as may be practicable, to applications and orders under this chapter.

PART III.

OF PREVENTIVE RELIEF.

CHAPTER IX.

OF INJUNCTIONS GENERALLY.

52. Preventive relief is granted at the discretion of the Court by injunction, temporary or perpetual.

53. Temporary injunctions are such as are to continue until a specified time, or until the further order of the Court. They may be granted at any period of a suit, and are regulated by the Code of Civil Procedure.

Perpetual injunctions. A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit : the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

CHAPTER X.

OF PERPETUAL INJUNCTIONS.

54. Subject to the other provisions contained in, or referred to by, this chapter, a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether expressly or by implication.

When such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter II of this Act.

When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases (namely) :—

- (a) where the defendant is trustee of the property for the plaintiff ;
- (b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion ;
- (c) where the invasion is such that pecuniary compensation would not afford adequate relief ;
- (d) where it is probable that pecuniary compensation cannot be got for the invasion ;
- (e) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

Explanation.—For the purpose of this section a trademark is property.

Illustrations.

(a.) A lets certain land to B, and B contracts not to dig sand or gravel thereout. A may sue for an injunction to restrain B from digging in violation of his contract.

(b.) A trustee threatens a breach of trust. His co-trustees, if any, should, and the beneficial owners may, sue for an injunction to prevent the breach.

(c.) The directors of a public company are about to pay a dividend out of capital or borrowed money. Any of the shareholders may sue for an injunction to restrain them.

(d.) The directors of a fire and life-insurance company are about to engage in marine insurances. Any of the shareholders may sue for an injunction to restrain them.

(e.) A, an executor, through misconduct or insolvency, is bringing the property of the deceased into danger. The Court may grant an injunction to restrain him from getting in the assets.

(f.) A, a trustee for B, is about to make an imprudent sale of a small part of the trust-property. B may sue for an injunction to restrain the sale, even though compensation in money would have afforded him adequate relief.

(g.) A makes a settlement (not founded on marriage or other valuable consideration) of an estate on B and his children. A then contracts to sell the estate to C. B or any of his children may sue for an injunction to restrain the sale.

(h.) In the course of A's employment as a vakil, certain papers belonging to his client, B, come into his possession. A threatens to make these papers public, or to communicate their contents to a stranger. B may sue for an injunction to restrain A from so doing.

(i.) A is B's medical adviser. He demands money of B, which B declines to pay. A then threatens to make known the effect of B's communications to him as patient. This is contrary to A's duty, and B may sue for an injunction to restrain him from so doing.

(j.) A, the owner of two adjoining houses, lets one to B, and afterwards lets the other to C. A and C begin to make such alterations in the house let to C as will prevent the comfortable enjoyment of the house let to B. B may sue for an injunction to restrain them from so doing.

(k.) A lets certain arable lands to B for purposes of husbandry, but without any express contract as to the mode of cultivation. Contrary to the mode of cultivation customary in the district, B threatens to sow the lands with seed injurious thereto, and requiring many years to eradicate. A may sue for an injunction to restrain B from sowing the lands in contravention of his implied contract to use them in a husbandlike manner.

(l.) A, B, and C, are partners, the partnership being determinable at will. A threatens to do an act tending to the destruction of the partnership-property. B and C may, without seeking a dissolution of the partnership, sue for an injunction to restrain A from doing the act.

(m.) A, a Hindu widow in possession of her deceased husband's property, commits destruction of the property without any cause sufficient to justify her in so doing. The heir-expectant may sue for an injunction to restrain her.

(n.) A, B, and C, are members of an undivided Hindu family. A cuts timber growing on the family-property, and threatens to destroy part of the family-house, and to sell some of the family-utensils. B and C may sue for an injunction to restrain him.

(o.) A, the owner of certain houses in Calcutta, becomes insolvent. B buys them from the official assignee, and enters into possession. A persists in trespassing on and damaging the houses, and B is thereby compelled, at considerable expense, to employ men to protect the possession. B may sue for an injunction to restrain further acts of trespass.

(p.) The inhabitants of a village claim a right of way over A's land. In a suit against several of them, A obtains a declaratory decree that his land is subject to no such right. Afterwards each of the other villagers sues A for obstructing his alleged right of way over the land. A may sue for an injunction to restrain them.

(q.) A, in an administration-suit to which a creditor, B, is not a party, obtains a decree for the administration of C's assets. B proceeds against C's estate for his debt. A may sue for an injunction to restrain B.

(r.) A and B are in possession of contiguous lands and of the mines underneath them. A works his mine so as to extend under B's mine, and threatens to remove certain pillars which help to support B's mine. B may sue for an injunction to restrain him from so doing.

(s.) A rings bells or makes some other unnecessary noise so near a house as to interfere materially and unreasonably with the physical comfort of the occupier, B. B may sue for an injunction restraining A from making the noise.

(t.) A pollutes the air with smoke so as to interfere materially with the physical comfort of B and C, who carry on business in a neighbouring house. B and C may sue for an injunction to restrain the pollution.

(u.) A infringes B's patent. If the Court is satisfied that the patent is valid, and has been infringed, B may obtain an injunction to restrain the infringement.

(v.) A pirates B's copyright. B may obtain an injunction to restrain the piracy, unless the work of which copyright is claimed is libellous or obscene.

(w.) A improperly uses the trademark of B. B may obtain an injunction to restrain the user, provided that B's use of the trademark is honest.

(x.) A, a tradesman, holds out B as his partner against the wish and without the authority of B. B may sue for an injunction to restrain A from so doing.

(y.) A, a very eminent man, writes letters on family-topics to B. After the death of A and B, C, who is B's residuary legatee, proposes to make money by publishing A's letters. D, who is A's executor, has a property in the letters, and may sue for an injunction to restrain C from publishing them.

(z.) A carries on a manufactory, and B is his assistant. In the course of his business, A imparts to B a secret process of value. B afterwards demands money of A, threatening, in case of refusal, to disclose the process to C, a rival-manufacturer. A may sue for an injunction to restrain B from disclosing the process.

55. When, to prevent the breach of an obligation, it is necessary to com-

Mandatory injunctions. .-pel the performance of certain acts which the Court is capable of enforcing, the Court may, in its discretion, grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

Illustrations.

(a.) A, by new buildings, obstructs lights to the access and use of which B has acquired a right under the Indian Limitation Act, Part IV. B may obtain an injunction not only to restrain A from going on with the buildings, but also to pull down so much of them as obstructs B's lights.

(b.) A builds a house with eaves projecting over B's land. B may sue for an injunction to pull down so much of the eaves as so project.

(c.) In the case put as illustration *i* to section 54, the Court may also order all written communications made by B as patient to A, as medical adviser, to be destroyed.

(d.) In the case put as illustration *y* to section 54, the Court may also order A's letters to be destroyed.

(e.) A threatens to publish statements concerning B which would be punishable under Chapter XXI of the Indian Penal Code. The Court may grant an injunction to restrain the publication, even though it may be shown not to be injurious to B's property.

(f.) A, being B's medical adviser, threatens to publish B's written communications with him showing that B has led an immoral life. B may obtain an injunction to restrain the publication.

(g.) In the cases put as illustrations *v* and *w* to section 54, and as illustrations *e* and *f* to this section, the Court may also order the copies produced by piracy, and the trademarks, statements, and communications, therein respectively mentioned, to be given up or destroyed.

Injunction when refused.

56. An injunction cannot be granted—

(a) to stay a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings ;

(b) to stay proceedings in a Court not subordinate to that from which the injunction is sought ;

(c) to restrain persons from applying to any legislative body ;

(d) to interfere with the public duties of any department of the Government of India or the Local Government, or with the sovereign acts of a Foreign Government ;

(e) to stay proceedings in any criminal matter ;

(f) to prevent the breach of a contract the performance of which would not be specifically enforced ;

(g) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance ;

(h) to prevent a continuing breach in which the applicant has acquiesced ;

(i) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding, except in case of breach of trust ;

(j) when the conduct of the applicant or his agents has been such as to disentitle him to the assistance of the Court ;

(k) where the applicant has no personal interest in the matter.

Illustrations.

(a.) A seeks an injunction to restrain his partner, B, from receiving the partnership debts and effects. It appears that A had improperly possessed himself of the books of the firm, and refused B access to them. The Court will refuse the injunction.

(b.) A manufactures and sells crucibles, designating them as "patent plumbago crucibles," though, in fact, they have never been patented. B pirates the designation. A cannot obtain an injunction to restrain the piracy.

(c.) A sells an article called "Mexican Balm," stating that it is compounded of diverse rare essences, and has sovereign medicinal qualities. B commences to sell a similar article, to which he gives a name and description such as to lead people into the belief that they are buying A's Mexican Balm. A sues B for an injunction to restrain the sale. B shows that A's Mexican Balm consists of nothing but scented hog's lard. A's use of his description is not an honest one, and he cannot obtain an injunction.

57. Notwithstanding section 56, clause *f*, where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the Court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement; provided that the applicant has not failed to perform the contract so far as it is binding on him.

Illustrations.

(a.) A contracts to sell to B for Rs. 1,000 the good-will of a certain business unconnected with business-premises, and further agrees not to carry on that business in Calcutta. B pays A the Rs. 1,000, but A carries on the business in Calcutta. The Court cannot compel A to send his customers to B, but B may obtain an injunction restraining A from carrying on the business in Calcutta.

(b.) A contracts to sell to B the good-will of a business. A then sets up a similar business close by B's shop, and solicits his old customers to deal with him. This is contrary to his implied contract, and B may obtain an injunction to restrain A from soliciting the customers, and from doing any act whereby their good-will may be withdrawn from B.

(c.) A contracts with B to sing for twelve months at B's theatre, and not to sing in public elsewhere. B cannot obtain specific performance of the contract to sing, but he is entitled to an injunction restraining A from singing at any other place of public entertainment.

(d.) B contracts with A that he will serve him faithfully for twelve months as a clerk. A is not entitled to a decree for specific performance of this contract. But he is entitled to an injunction restraining B from serving a rival-house as clerk.

(e.) A contracts with B that, in consideration of Rs. 1,000 to be paid to him by B on a day fixed, he will not set up a certain business within a specified distance. B fails to pay the money. A cannot be restrained from carrying on the business within the specified distance.

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| Number and year. | Subject. | Extent of repeal. |
|------------------|------------------------|--|
| VIII of 1859 | Civil Procedure | Sections 15 and 192. |
| XIV of 1859 | Limitation | Section 15. |
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THE INDIAN REGISTRATION ACT,

No. III of 1877. †

[Received the Governor-General's assent on the 14th February 1877.]

AN ACT FOR THE REGISTRATION OF DOCUMENTS.

WHEREAS it is expedient to amend the law relating to the registration of documents ; It is hereby enacted as follows :—
Preamble.

PART I.

PRELIMINARY.

Short title.

1. This Act may be called "The Indian Registration Act, 1877."

Local extent.

It extends to the whole of British India, except such districts or tracts of country as the Local Government may from time to time, with the previous sanction of the Governor-General in Council, exclude from its operation.

Commencement.

And it shall come into force on the first day of April 1877.

Repeal of enactments.

2. On and from that day Act No. VIII. of 1871 shall be repealed.

But all appointments, notifications, rules, and orders made, and all districts and sub-districts formed, and all offices established, and all tables of fees prepared, under such Act or any of the enactments thereby repealed, shall be deemed to have been respectively made, formed, established, and prepared under this Act, except in so far as such rules and orders may be inconsistent herewith.

References made in Acts passed before the first day of April 1877 to the said Act, or to any enactment thereby repealed, shall be read as if made to the corresponding section of this Act.

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context—

"Lease."

"Lease" includes a counterpart, kabúliyat, an undertaking to cultivate or occupy, and an agreement to lease :

"Signature."

"Signed."

"Signature" and "signed" include and apply to the affixing of a mark :

"Immoveable property" includes land, buildings, hereditary allowances

rights to ways, lights, ferries, fisheries, or any other benefit to arise out of land, and things attached to

the earth or permanently fastened to anything which is attached to the earth but not standing timber, growing crops, nor grass :

- "Moveable property" includes standing timber, growing crops and grass, fruit upon and juice in trees, and property of every other description, except immoveable property:
- "Book" includes a portion of a book, and also any number of sheets connected together with a view of forming a book or portion of a book:
- "Endorsement." "Endorsement" and "endorsed" include and apply to an entry in writing by a registering officer on a rider or covering slip to any document tendered for registration under this Act:
- "Endorsed."
- "Minor." "Minor" means a person who, according to the personal law to which he is subject, has not attained majority:
- "Representative." "Representative" includes the guardian of a minor and the committee or other legal curator of a lunatic or idiot:
- "Addition" means the place of residence, and the profession, trade, rank, and title (if any) of a person described, and, in the case of a native, his caste (if any) and his father's name, or, where he is usually described as the son of his mother, then his mother's name:
- "Addition."
- "District Court" includes the High Court in its ordinary original civil jurisdiction; and
- "District." "Sub-District." "District" and "Sub-District" respectively mean a district and sub-district formed under this Act.

PART II.

OF THE REGISTRATION-ESTABLISHMENT.

4. The Local Government shall appoint an officer to be the Inspector-General of Registration for the territories subject to such Government,

or may, instead of making such appointment, direct that all or any of the powers and duties hereinafter conferred and imposed upon the Inspector-General shall be exercised and performed by such officer or officers, and within such local limits, as the Local Government from time to time appoints in this behalf.

The Governor of Bombay in Council may also, with the previous consent of the Governor-General in Council, appoint an officer to be Branch Inspector-General of Sindh, who shall have all the powers of an Inspector-General under this Act other than the power to frame rules hereinafter conferred.

Any Inspector-General or the Branch Inspector-General of Sindh may hold simultaneously any other office under Government.

5. For the purposes of this Act, the Local Government shall form districts and sub-districts, and shall prescribe, and may from time to time alter, the limits of such districts and sub-districts.

The districts and sub-districts formed under this section, together with the limits thereof and every alteration of such limits, shall be notified in the local official Gazette.

Every such alteration shall take effect on such day after the date of the notification as is therein mentioned.

6. The Local Government may appoint such persons, whether public Registrars and Sub-Registrars. officers or not, as it thinks proper, to be Registrars of the several districts, and to be Sub-Registrars of the several sub-districts, formed as aforesaid, respectively.

7. The Local Government shall establish in every district an office to be styled the office of the Registrar, and in every sub-district an office or offices to be styled the office of the Sub-Registrar, or the offices of the Joint Sub-Registrars, and may amalgamate with any office of a Registrar any office of a Sub-Registrar subordinate to such Registrar,

and may authorize any Sub-Registrar whose office has been so amalgamated to exercise and perform, in addition to his own powers and duties, all or any of the powers and duties of the Registrar to whom he is subordinate :

Provided that no such authorization shall enable a Sub-Registrar to hear an appeal against an order passed by himself under this Act.

8. The Local Government may also appoint officers to be called Inspectors of Registration-offices. tors of Registration-offices, and may from time to time prescribe the duties of such officers. Every such Inspector shall be subordinate to the Inspector-General.

9. Every military cantonment where there is a Cantonment Magistrate may (if the Local Government so directs) be, for the purposes of this Act, a sub-district or a district, and such Magistrate shall be the Sub-Registrar or the Registrar of such sub-district or district, as the case may be.

Whenever the Governor-General in Council declares any military cantonment beyond the limits of British India to be a sub-district or a district for the purposes of this Act, he shall also declare, in the case of a sub-district, what authorities shall be Registrar of the district and Inspector-General, and, in the case of a district, what authority shall be Inspector-General with reference to such cantonment and the Sub-Registrar or Registrar thereof.

10. Whenever any Registrar other than the Registrar of a district including a Presidency-town, is absent otherwise than on duty in his district, or when his office is temporarily vacant,

any person whom the Inspector-General appoints in this behalf, or, in default of such appointment, the Judge of the District Court within the local limits of whose jurisdiction the Registrar's office is situate, shall be the Registrar during such absence or until the Local Government fills up the vacancy.

Whenever the Registrar of a district, including a Presidency-town, is absent otherwise than on duty in his district, or when his office is temporarily vacant, any person whom the Inspector-General appoints in this behalf shall be the Registrar during such absence, or until the Local Government fills up the vacancy.

11. Whenever any Registrar is absent from his office on duty in his district, he may appoint any Sub-Registrar or other person in his district to perform, during such absence, all the duties of a Registrar, except those mentioned in sections 68 and 72.

12. Whenever any Sub-Registrar is absent, or when his office is temporarily vacant, any person whom the Registrar of the district appoints in this behalf shall be Sub-Registrar during such absence, or until the Local Government fills up the vacancy.

13. All appointments made under section 10, section 11, or section 12, shall be reported to the Local Government by the Inspector-General. Such report shall be either special or general as the Local Government directs.

The Local Government may suspend, remove, or dismiss any person appointed under the provisions of this Act, and appoint another person in his stead.

14. Subject to the approval of the Governor-General in Council, the Local Government may assign such salaries as such Government from time to time deems proper to the registering officers appointed under this Act, or provide for their remuneration by fees, or partly by fees and partly by salaries.

The Local Government may allow proper establishments for the several offices under this Act.

15. The several Registrars and Sub-Registrars shall use a seal bearing the following inscription in English and in such other language as the Local Government directs:—
“The seal of the Registrar (or of the Sub-Registrar) of .”

16. The Local Government shall provide for the office of every registering officer the books necessary for the purposes of this Act.

The books so provided shall contain the forms from time to time prescribed by the Inspector-General, with the sanction of the Local Government, and the pages of such books shall be consecutively numbered in print, and the number of pages in each book shall be certified on the title-page by the officer by whom such books are issued.

The Local Government shall supply the office of every Registrar with a fire-proof box, and shall, in each district, make suitable provision for the safe custody of the records connected with the registration of documents in such district.

PART III.

OF REGISTRABLE DOCUMENTS.

17. The documents next hereinafter mentioned shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which Act No. XVI of 1864, or Act No. XX of 1866, or Act No. VIII of 1871, or this Act, came or comes into force (that is to say),—

REGISTRABLE DOCUMENTS.

5

(a) instruments of gift of immoveable property :

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit, or extinguish, whether in present or in future, any right, title, or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property :

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation, or extinction of any such right, title, or interest : and

(d) leases of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent :

Provided that the Local Government may, by order published in the official Gazette, exempt from the operation of the former part of this section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years, and the annual rents reserved by which do not exceed fifty rupees.

Exception of

Nothing in clauses b and c of this section applies to

composition deeds ;

(e) any composition-deed ;

(f) any instrument relating to shares in a Joint Stock Company, and of transfers of shares notwithstand-
ing that the assets of such Company consist in whole or in part of immoveable property, or

(g) any endorsement upon or transfer of any debenture issued by any such Company ;

(h) any document not itself creating, declaring, assigning, limiting, or extinguishing any right, title, or interest of the value of one hundred rupees and upwards to or in immoveable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit, or extinguish any such right, title, or interest ;

(i) decrees and orders of Courts and awards ;

(j) grants of immoveable property by Government ;

(k) instruments of partition made by revenue-officers ;

(l) certificates and instruments of collateral security granted under the Land Improvement Act, 1871.

Authorities to adopt.

Authorities to adopt a son, executed after the first day of January 1872, and not conferred by a will, shall also be registered.

Documents of which registration is optional.

18. Any of the documents next hereinafter mentioned may be registered under this Act (that is to say),—

(a) instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit, or extinguish, whether in present or in future, any right, title, or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immoveable property :

(b) instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation, or extinction of any such right, title, or interest :

(c) leases of immoveable property for any term not exceeding one year, and leases exempted under section 17 :

(d) instruments (other than wills) which purport or operate to create, declare, assign, limit, or extinguish any right, title, or interest to or in moveable property :

(e) wills :

(f) all other documents not required by section 17 to be registered.

19. If any document duly presented for registration be in a language which the registering officer does not understand, and which is not commonly used in the district, he shall refuse to register the document, unless it be accompanied by a true translation into a language commonly used in the district, and also by a true copy.

20. The registering officer may, in his discretion, refuse to accept for registration any document in which any interlineation, blank, erasure, or alteration appears, unless the persons executing the document attest with their signatures or initials such interlineation, blank, erasure, or alteration. If he registers such document, he shall, at the time of registering the same, make a note in the register of such interlineation, blank, erasure, or alteration.

21. (a.) No non-testamentary document relating to immoveable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same.

(b.) Houses in town shall be described as situate on the north or other side of the street or road (mentioning it) to which they front, and by their existing and former occupancies, and by their numbers, if the houses in such street or road are numbered. Other houses and lands shall be described by their name, if any, and as being in the territorial division in which they are situate, and by their superficial contents, the roads and other properties on which they abut, and their existing occupancies, and also, whenever it is practicable, by reference to a Government map or survey.

(c.) No non-testamentary document containing a map or plan of any property, comprised therein shall be accepted for registration unless it be accompanied by a true copy of the map or plan, or, in case such property is situate in several districts, by such number of true copies of the map or plan as are equal to the number of such districts.

22. Failure to comply with the provisions contained in section 21, clause b, shall not disentitle a document to be registered if the description of the property to which it relates is sufficient to identify such property.

PART IV.

OF THE TIME OF PRESENTATION.

23. Subject to the provisions contained in sections 24, 25, and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution,

or, in the case of a copy of a decree or order, within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final:

Provided that, where there are several persons executing a document at different times, such document may be presented for registration and re-registration within four months from the date of each execution.

24. If, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in British India, is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration-fee, such document shall be accepted for registration.

Any application for such direction may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

25. When a document purporting to have been executed by all or any of the parties out of British India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the registering officer, if satisfied,

(a) that the instrument was so executed, and

(b) that it has been presented for registration within four months after its arrival in British India,

may, on payment of the proper registration-fee, accept such document for registration.

26. Whenever a registration-office is closed on the last day of any period provided in this Act for the presentation of any document, such last day shall, for the purposes of this Act, be deemed to be the day on which the office re-opens:

27. A will may at any time be presented for registration or deposited in manner hereinafter provided.

Wills may be presented or deposited at any time.

PART V.

OF THE PLACE OF REGISTRATION.

28. Save as in this Part otherwise provided, every document mentioned in section 17, clauses *a*, *b*, *c*, and *d*, and section 18, clauses *a*, *b*, and *c*, shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate.

29. Every document other than a document referred to in section 28, and a copy of a decree or order, may be presented for registration either in the office of the Sub-Registrar in whose sub-district the document was executed, or in the office of any other Sub-Registrar under the local Government at which all the persons executing and claiming under the document desire the same to be registered.

A copy of a decree or order may be presented for registration in the office of the Sub-Registrar in whose sub-district the original decree or order was made, or, where the decree or order does not affect immoveable property, in the office of any other Sub-Registrar under the Local Government at which all the persons claiming under the decree or order desire the copy to be registered.

30. (a.) Any Registrar may, in his discretion, receive and register any document which might be registered by any Sub-Registrar subordinate to him.
 Registration by Registrar.
 (b.) The Registrar of a district including a Presidency-town and the Registrar of the Lahore District may receive and register any document referred to in section 28 without regard to the situation in any part of British India of the property to which the document relates.
 Registration by Registrar at Presidency-town and Lahore.

31. In ordinary cases the registration or deposit of documents under this Act shall be made only at the office of the officer authorized to accept the same for registration or deposit.
 Registration or acceptance for deposit at private residence.

But such officer may, on special cause being shown, attend at the residence of any person desiring to present a document for registration or to deposit a Will, and accept for registration or deposit such document or Will.

PART VI.

OF PRESENTING DOCUMENTS FOR REGISTRATION.

32. Except in the cases mentioned in section 31 and section 89, every document to be registered under this Act, whether compulsory or optional, shall be presented at the proper registration-office, by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or by the representative or assign of such person, or by the agent of such person, representative, or assign, duly authorised by power-of-attorney executed and authenticated in manner hereinafter mentioned.

33. For the purposes of section 32, the powers-of-attorney next hereinafter mentioned shall alone be recognized (that is to say),—
 Powers-of-attorney recognizable for purposes of section 32.

(a) if the principal at the time of executing the power-of-attorney resides in any part of British India in which this Act is for the time being in force, a power-of-attorney executed before and authenticated by the Registrar or Sub-Registrar within whose district or sub-district the principal resides :

(b) if the principal at the time aforesaid resides in any other part of British India, a power-of-attorney executed before and authenticated by any Magistrate :

(c) if the principal at the time aforesaid does not reside in British India, a power-of-attorney executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, British Consul, or Vice-Consul, or representative of Her Majesty or of the Government of India :

Provided that the following persons shall not be required to attend at any registration-office or Court for the purpose of executing any such power-of-attorney as is mentioned in clauses *a* and *b* of this section :—

Proviso as to persons in firm, or in jail, or exempt from appearing in Court.

persons who, by reason of bodily infirmity, are unable, without risk of serious inconvenience, so to attend ;

persons who are in jail under civil or criminal process ; and

persons exempt by law from personal appearance in Court.

In every such case the Registrar or Sub-Registrar or Magistrate (as the case may be), if satisfied that the power-of-attorney has been voluntarily executed by the person purporting to be the principal, may attest the same without requiring his personal attendance at the office or Court aforesaid.

To obtain evidence as to the voluntary nature of the execution, the Registrar or Sub-Registrar or Magistrate may either himself go to the house of the person purporting to be the principal, or to the jail in which he is confined, and examine him, or issue a commission for his examination.

Any power-of-attorney mentioned in this section may be proved by the production of it without further proof, when it purports, on the face of it, to have been executed before and authenticated by the person or Court herein before mentioned in that behalf.

34. Subject to the provisions contained in this Part and in sections 41,

Inquiry before registration by registering officer.

43, 45, 69, 75, 77, 88, and 89, no document shall be registered under this Act, unless the persons executing such document, or their representatives, assigns, or agents authorized as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25, and 26 :

Provided that if, owing to urgent necessity or unavoidable accident, all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that, on payment of a fine, not exceeding ten times the amount of the proper registration-fee, in addition to the fine, if any, payable under section 24, the document may be registered.

Such appearance may be simultaneous or at different times.

The registering officer shall thereupon—

(a) enquire whether or not such document was executed by the persons by whom it purports to have been executed,

(b) satisfy himself as to the identity of the persons appearing before him, and alleging that they have executed the document, and

(c) in the case of any person appearing as a representative, assign, or agent, satisfy himself of the right of such person so to appear.

Any application for a direction under the proviso in this section may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

Nothing in this section applies to copies of decrees or orders.

35. If all the persons executing the document appear personally before

Procedure on admission of execution.

the registering officer, and are personally known to him, or if he be otherwise satisfied that they are the persons they represent themselves to be, and if they all admit the execution of the document ;

or, in the case of any person appearing by a representative, assign, or agent, if such representative, assign, or agent admits the execution ;

104. In section 35 of the same Act, after the words "person appears," the words "to the registering officer" shall be inserted ; and after the words "refuse to register the document," the words "as to the person so denying appearing, or dead" shall be inserted.

Amendment of Act III. of 1877, section 35.

or, if the person executing the document is dead, and his representative or assign appears before the registering officer, and admits the execution, the registering officer shall register the document as directed in sections 58 to 61, inclusive.

The registering officer may, in order to satisfy himself that the persons Procedure on denial of appearing before him are the persons they represent execution, &c. themselves to be, or for any other purpose contemplated by this Act, examine any one present in his office. If any of the persons by whom the document purports to be executed deny its execution, or

if any such person appears to be a minor, an idiot, or a lunatic, or if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution,

the registering officer shall refuse to register the document: Provided that, where such officer is a Registrar, he shall follow the procedure prescribed in Part XII of this Act.

PART VII.

OF ENFORCING THE APPEARANCE OF EXECUTANTS AND WITNESSES.

36. If any person presenting any document for registration, or claiming under any document which is capable of being so presented, desires the appearance of any person whose presence or testimony is necessary for the registration of such document, the registering officer may, in his discretion, call upon such officer or Court as the Local Government from time to time directs in this behalf to issue a summons requiring him to appear at the registration-office, either in person or by duly authorized agent, as in the summons may be mentioned, and at a time named therein.

37. The officer or Court, upon receipt of the peon's fee payable in such cases, shall issue the summons accordingly, and cause it to be served upon the person whose appearance is so required.

38. A person who, by reason of bodily infirmity, is unable, without risk or serious inconvenience, to appear at the registration-office,

a person in jail under civil or criminal process, and persons exempt by law from personal appearance in Court, and who would, but for the provision next hereinafter contained, be required to appear in person at the registration-office, shall not be required so to appear.

In every such case, the registering officer shall either himself go to the house of such person, or to the jail in which he is confined, and examine him, or issue a commission for his examination.

39. The law in force for the time being as to summonses, commissions, and compelling the attendance of witnesses, and for their remuneration in suits before Civil Courts, shall, save as aforesaid, and *mutatis mutandis*, apply to any summons or commission issued, and any person summoned to appear under the provisions of this Act.

PART VIII.

OF PRESENTING WILLS AND AUTHORITIES TO ADOPT.

Persons entitled to present wills and authorities to adopt.

40. The testator, or after his death any person claiming as executor or otherwise under a will, may present it to any Registrar or Sub-Registrar for registration,

and the donor, or after his death the donee, of any authority to adopt, or the adoptive son, may present it to any Registrar or Sub-Registrar for registration.

41. A will or an authority to adopt, presented for registration by the Registrar of wills and testator or donor, may be registered in the same manner as any other document.

A will or authority to adopt, presented for registration by any other person entitled to present it, shall be registered if the registering officer is satisfied

(a) that the will or authority was executed by the testator or donor, as the case may be ;

(b) that the testator or donor is dead ; and

(c) that the person presenting the will or authority is, under section 40, entitled to present the same.

PART IX.

OF THE DEPOSIT OF WILLS.

42. Any testator may, either personally or by duly authorized agent, deposit with any Registrar his will in a sealed cover superscribed with the name of the testator and that of his agent (if any) and with a statement of the nature of the document.

43. On receiving such cover, the Registrar, if satisfied that the person presenting the same for deposit is the testator or his agent, shall transcribe in his Register-book No. 5 the superscription aforesaid, and shall note in the same book and on the said cover the year, month, day, and hour of such presentation and receipt, and the names of any persons who may testify to the identity of the testator or his agent, and any legible inscription which may be on the seal of the cover.

The Registrar shall then place and retain the sealed cover in his fire-proof box.

44. If the testator who has deposited such cover wishes to withdraw it, he may apply either personally or by duly authorized agent to the Registrar who holds it in deposit, and such Registrar, if satisfied that the applicant is actually the testator or his agent, shall deliver the cover accordingly.

45. If, on the death of a testator who has deposited a sealed cover under section 42, application be made to the Registrar who holds it in deposit to open the same, and if the Registrar is satisfied that the testator is dead, he shall, in the applicant's presence, open the cover, and, at the applicant's expense, cause the contents thereof to be copied into his Book No. 3.

When such copy has been made, the Registrar shall re-deposit the original will.

46. Nothing hereinbefore contained shall affect the provisions of the Saving of Act X of 1865, Indian Succession Act, section 259, or the power of any Court by order to compel the production of any will. But whenever any such order is made, the Registrar shall, unless the will has been already copied under section 45, open the cover, and cause the will to be copied into his Book No. 3, and make a note on such copy that the original has been removed into Court in pursuance of the order aforesaid.

PART X.

OF THE EFFECTS OF REGISTRATION AND NON-REGISTRATION.

47. A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.

48. All non-testamentary documents duly registered under this Act, and relating to any property, whether moveable or immoveable, shall take effect against any oral agreement or declaration relating to such property, unless where the agreement or declaration has been accompanied or followed by delivery of possession.

Effect of non-registration of documents required to be registered.

49. No document required by section 17 to be registered shall affect any immoveable property comprised therein, or confer any power to adopt, or be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered in accordance with the provisions of this Act.

50. Every document of the kinds mentioned in clauses *a*, *b*, *c*, and *d* of section 17, and clauses *a* and *b* of section 18, shall, if duly registered, take effect, as regards the property comprised therein, against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not.

Nothing in the former part of this section applies to leases exempted under the proviso in section 17, or to the documents mentioned in clauses *e*, *f*, *g*, *h*, *i*, *j*, *k*, and *l* of the same section.

Explanation.—In cases where Act No. XVI of 1864 or Act No. XX of 1866 was in force in the place and at the time in and at which such unregistered document was executed, “unregistered” means not registered according to such Act, and where the document is executed after the first day of July 1871, not registered under Act No. VIII of 1871 or this Act.

PART XI.

OF THE DUTIES AND POWERS OF REGISTERING OFFICERS.

(A.) *As to the Register-books and Indexes.*

Register-books to be kept
in the several offices.

51. The following Books shall be kept in the
several offices hereinafter named (that is to say)—

In all registration-offices—

Book 1, "Register of non-testamentary documents relating to immoveable property :"

Book 2, "Record of reasons for refusal to register ;"

Book 3, "Register of wills and authorities to adopt ;" and

Book 4, "Miscellaneous Register."

In the offices of Registrars—

Book 5, "Register of deposits of wills."

In Book 1 shall be entered or filed all documents or memoranda registered under sections 17, 18, and 87, which relate to immoveable property, and are not wills.

In Book 4 shall be entered all documents registered under clauses *d* and *f* of section 18, which do not relate to immoveable property.

Nothing in the former part of this section shall be deemed to require more than one set of books where the office of the Registrar has been amalgamated with the office of a Sub-Registrar.

52. The day, hour, and place of presentation, and the signature of every
Endorsements on documents presented. person presenting a document for registration, shall be endorsed on every such document at the time of presenting it: a receipt for such document shall be given by the registering officer to the person presenting the same; and, subject to the provisions contained in section 62, every document admitted to registration shall, without unnecessary delay, be copied in the book appropriated therefor according to the order of its admission.

And all such books shall be authenticated at such intervals and in such manner as is from time to time prescribed by the Inspector-General.

53. All entries in each book shall be numbered in a consecutive series,
• Entries to be numbered consecutively. which shall commence and terminate with the year, a fresh series being commenced at the beginning of each year.

54. In every office in which any of the books hereinbefore mentioned are
Current indexes and entries therein. kept, there shall be prepared current indexes of the contents of such books; and every entry in such indexes shall be made, so far as practicable, immediately after the registering officer has copied, or filed a memorandum of, the document to which it relates.

55. Four such indexes shall be made in all registration-offices, and shall
Indexes to be made by registering officers. be named, respectively, Index No. I, Index No. II, Index No. III, and Index No. IV.

Index No. I shall contain the names and additions of all persons executing and of all persons claiming under every document entered or memorandum filed in Book No. 1.

105. In section 51 of the same Act, for
Amendment of section 51. the figures "87," the figures "89" shall be
substituted

Index No. II shall contain such particulars mentioned in section 21 relating to every such document and memorandum as the Inspector-General from time to time directs in that behalf.

Index No. III shall contain the names and additions of all persons executing every will and authority entered in Book No. 3, and of the executors and persons respectively appointed thereunder, and after the death of the testator or the donor (but not before) the names and additions of all persons claiming under the same.

Index No. IV shall contain the names and additions of all persons executing and of all persons claiming under every document entered in Book No. 4.

Indexes Nos. I, II, III, and IV, shall contain such other particulars, and shall be prepared in such form, as the Inspector-General from time to time directs.

Extra particulars in Indexes.

56. Every Sub-Registrar shall send to the Registrar to whom he is subordinate, at such intervals as the Inspector-General from time to time directs, a copy of all entries made by such Sub-Registrar, during the last of such intervals, in Indexes Nos. I, II, and III.

Copy of entries in Indexes Nos. I, II, and III to be sent by Sub-Registrar to Registrar.

Such copy to be filed by Registrar.

Every Registrar receiving such copy shall file it in his office.

57. Subject to the previous payment of the fees payable in that behalf, the Books Nos. 1 and 2, and the Indexes relating to Book No. 1, shall be at all times open to inspection by any person applying to inspect the same; and, subject to the provisions of section 62, copies of entries in such Books shall be given to all persons applying for such copies.

Subject to the same provisions, copies of entries in book No. 3, and in the Index relating thereto, shall be given to the persons executing the documents to which such entries relate, or to their agents, and after the death of the executants (but not before) to any person applying for such copies.

Subject to the same provisions, copies of entries in Book No. 4, and in the Index relating thereto, shall be given to any person executing or claiming under the documents to which such entries respectively refer, or to his agent or representative. The requisite search under this section for entries in Books Nos. 3 and 4 shall be made only by the registering officer.

All copies given under this section shall be signed and sealed by the registering officer, and shall be admissible for the purpose of proving the contents of the original documents.

(B.) As to the Procedure on admitting to Registration.

58. On every document admitted to registration, other than a copy of a decree or order, or a copy of a certificate under the Land Improvement Act, 1871, sent by the Collector to be registered, there shall be endorsed from time to time the following particulars (that is to say),—

(a) the signature and addition of every person admitting the execution of the document; and, if such execution has been admitted by the representative, assign, or agent of any person, the signature and addition of such representative, assign, or agent.

(b) the signature and addition of every person examined in reference to such document under any of the provisions of this Act; and

(c) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any admission of receipt of consideration, in whole or in part, made in his presence, in reference to such execution.

If any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register it, but shall, at the same time, endorse a note of such refusal.

59. The registering officer shall affix the date and his signature to all

Such endorsements to be dated and signed by registering officer.

endorsements made under sections 52 and 58, relating to the same document, and made in his presence on the same day.

60. After such of the provisions of sections 34, 35, 58, and 59 as

Certificate showing that document has been registered, and number and page of book in which it has been copied.

apply to any document presented for registration, have been complied with, the registering officer shall endorse thereon a certificate containing the word "registered," together with the number and page of the book in which the document has been copied.

Such certificate shall be signed, sealed, and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsements referred to in section 59 have occurred as therein mentioned.

61. The endorsements and certificate referred to and mentioned in sec-

Endorsements and certificate to be copied.

tions 59 and 60 shall thereupon be copied into the margin of the Register-book, and the copy of the map or plan (if any) mentioned in section 21 shall be filed in Book No. 1.

The registration of the document shall thereupon be deemed complete, and the document shall then be returned to the person who presented the same for registration, or to such other person (if any) as he has nominated in writing in that behalf on the receipt mentioned in section 52.

62. When a document is presented for registration under section 19,

Procedure on presenting document in language unknown to registering officer.

the translation shall be transcribed in the register of documents of the nature of the original, and, together with the copy referred to in section 19, shall be filed in the registration-office.

The endorsements and certificate respectively mentioned in sections 59 and 60 shall be made on the original, and for the purpose of making the copies and memoranda required by sections 57, 64, 65, and 66, the translation shall be treated as if it were the original.

63. Every registering officer may, at his discretion, administer an oath

Power to administer oaths.

to any person examined by him under the provisions of this Act.

He may also, at his discretion, record a note of the substance of the state-

Record of substance of statements.

ment made by each such person, and such statement shall be read over, or (if made in a language with which such person is not acquainted) interpreted to

him in a language with which he is acquainted, and, if he admits the correctness of such note, it shall be signed by the registering officer.

Every such note so signed shall be admissible for the purpose of proving that the statements therein recorded were made by the persons and under the circumstances therein stated.

(C.) Special Duties of Sub-Registrar.

64. Every Sub-Registrar, on registering a non-testamentary document relating to immoveable property not wholly situate in his own sub-district, shall make a memorandum thereof and of the endorsement and certificate (if any) thereon, and send the same to every other Sub-Registrar subordinate to the same Registrar as himself in whose sub-district any part of such property is situate, and such Sub-Registrar shall file the memorandum in his Book No. 1.

65. Every Sub-Registrar, on registering a non-testamentary document relating to immoveable property situate in more districts than one, shall also forward a copy thereof and of the endorsement and certificate (if any) thereon, together with a copy of the map or plan (if any) mentioned in section 21, to the Registrar of every district in which any part of such property is situate other than the district in which his own sub-district is situate.

The Registrar, on receiving the same, shall file in his Book No. 1 the copy of the document and the copy of the map or plan (if any), and shall forward a memorandum of the document to each of the Sub-Registrars subordinate to him within whose sub-district any part of such property is situate; and every Sub-Registrar receiving such memorandum shall file it in his Book No. 1.

(D.) Special Duties of Registrar.

66. On registering any non-testamentary document relating to immoveable property, the Registrar shall forward a memorandum of such document to each Sub-Registrar subordinate to himself in whose sub-district any part of the property is situate.

He shall also forward a copy of such document, together with a copy of the map or plan (if any) mentioned in section 21, to every other Registrar in whose district any part of such property is situate.

Such Registrar, on receiving any such copy, shall file it in his Book No. 1, and shall also send a memorandum of the copy to each of the Sub-Registrars subordinate to him within whose sub-district any part of the property is situate.

Every Sub-Registrar receiving any memorandum under this section shall file it in his Book No. 1.

67. On any document being registered under section 30, clause b, a copy of such document and of the endorsements and certificate thereon shall be forwarded to every Registrar within whose district any part of the property to which the instrument relates is situate, and the Registrar receiving such copy shall follow the procedure prescribed for him in the first clause of section 66.

*(E.) Of the Controlling Powers of Registrars and
Inspectors-General.*

68. Every Sub-Registrar shall perform the duties of his office under the Registrar to superintend superintendence and control of the Registrar in respect of any act or omission of any Sub-Registrar subordinate to him, or in respect of the rectification of any error regarding the book or the office in which any document shall have been registered.

Every Registrar shall have authority to issue (whether on complaint or otherwise) any order consistent with this Act which he considers necessary in respect of any act or omission of any Sub-Registrar subordinate to him, or in respect of the rectification of any error regarding the book or the office in which any document shall have been registered.

69. The Inspector-General shall exercise a general superintendence over all the registration-offices in the territories under the Local Government, and shall have power from time to time to make rules consistent with this Act—
Inspector-General to superintend registration-offices. His power to make rules. providing for the safe custody of books, papers, and documents, and also for the destruction of such books, papers, and documents as need no longer be kept ;

declaring what languages shall be deemed to be commonly used in each district ;

declaring what territorial division shall be recognized under section 24

regulating the amount of fines imposed under sections 24 and 51 respectively ;

regulating the exercise of the discretion reposed in the registering officer by section 63 ;

regulating the form in which registering officers are to make memorials of documents ;

regulating the authentication by Registrars and Sub-Registrars of the books kept in their respective offices under section 51 ;

declaring the particulars to be contained in Indexes Nos. I, II, III, and IV, respectively ;

declaring the holidays that shall be observed in the registration-offices ;

and, generally, regulating the proceedings of the Registrars and Sub-Registrars.

The rules so made shall be submitted to the Local Government for approval, and, after they have been approved, they shall be published in the official Gazette, and shall then have the same force as if they were inserted in this Act.

70. The Inspector-General may also, in the exercise of his discretion, remit wholly or in part the difference between any fine levied under section 24 or section 51 and the amount of the proper registration-fee.
His power to remit fines.

PART XII.

OF REFUSAL TO REGISTER.

71. Every Sub-Registrar refusing to register Reasons for refusal to register to be recorded. a document, except on the ground that the property to which it relates is not situate within his sub-district,

shall make an order of refusal and record his reasons for such order in his Book No. 2, and endorse the words "registration refused" on the document : and, on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.

No registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered.

72. Except where the refusal is made on the ground of denial of execution, an appeal shall lie against an order of a Sub-Registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the Registrar to whom such Sub-Registrar is subordinate, if presented to such Registrar within thirty days from the date of the order; and the Registrar may reverse or alter such order :

and if the order of the Registrar directs the document to be registered, and the document is duly presented for registration within thirty days after the making of such order, the Sub-Registrar shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59, and 60 ; and such registration shall take effect as if the document had been registered when it was first duly presented for registration.

Application where Sub-Registrar refuses to register on ground of denial of execution.

73. When a Sub-Registrar has refused to register a document on the ground that any person by whom it purports to be executed, or his representative or assign, denies its execution,

any person claiming under such document, or his representative, assign, or agent authorized as aforesaid, may, within thirty days after the making of the order of refusal, apply to the Registrar to whom such Sub-Registrar is subordinate in order to establish his right to have the document registered.

Such application shall be in writing and shall be accompanied by a copy of the reasons recorded under section 71, and the statements in the application shall be verified by the applicant in manner required by law for the verification of plaints.

74. In such case, and also where such denial as aforesaid is made before Procedure of Registrar on such application. a Registrar in respect of a document presented for registration to him, he shall, as soon as conveniently may be, enquire—

(a) whether the document has been executed ;

(b) whether the requirements of the law for the time being in force have been complied with on the part of the applicant or person presenting the document for registration, as the case may be, so as to entitle the document to registration.

75. If the Registrar finds that the document has been executed, and that Order to register and procedure thereon. the said requirements have been complied with, he shall order the document to be registered.

And if the document be duly presented for registration within thirty days after the making of such order, the registering officer shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59, and 60.

Such registration shall take effect as if the document had been registered when it was first duly presented for registration.

The Registrar may, for the purpose of any enquiry under section 74, summon and enforce the attendance of witnesses, and compel them to give evidence as if he were a Civil Court, and he may also direct by whom the whole or any part of the costs of any such enquiry shall be paid, and such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure.

Refusal by Registrar.

76. Every Registrar refusing--

(a) to register a document except on the ground that the property to which it relates is not situate within his district, or that the document ought to be registered in the office of a Sub-Registrar, or

(b) to direct the registration of a document under section 72 or section 75, shall make an order of refusal, and record the reasons for such order in his Book No. 2, and, on application made by any person executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded.

No appeal lies from any order under this section or section 72.

77. Where the Registrar refuses to order the document to be registered

Suit in case of refusal.

under section 72 or section 76, any person claiming under such document, or his representative, assign, or agent, may, within thirty days after the making of the order of refusal institute in the Civil Court within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office, if it be duly presented for registration within thirty days after the passing of such decree; and the provisions contained in the second and third paragraphs of section 75 shall, *mutatis mutandis*, apply to all documents so presented, and, notwithstanding anything contained in this Act, the document shall be receivable in evidence in such suit.

PART XIII.

OF THE FEES FOR REGISTRATION, SEARCHES, AND COPIES.

78. Subject to the approval of the Governor-General in Council, the Fees to be fixed by Local Government shall prepare a table of fees payable—

for the registration of documents :
for searching the registers :
for making or granting copies of reasons, entries, or documents, before, on, or after registration :

And of extra or additional fees payable—

for every registration under section 30 :

for the issue of commissions :

for filing translations :

for attending at private residences :

for the safe custody and return of documents :

and for such other matters as appear to the Local Government necessary to effect the purposes of this Act.

Alteration of fees.

The Local Government may from time to time, subject to the like approval, alter such table.

79. A table of the fees so payable shall be published in the official Gazette, and a copy thereof in English and the vernacular language of the district shall be exposed to public view in every registration-office.

Fees payable on presentation.

80. All fees for the registration of documents under this Act shall be payable on the presentation of such documents.

PART XIV.

OF PENALTIES.

81. Every registering officer appointed under this Act, and every person employed in his office for the purposes of this Act, who, being charged with the endorsing, copying, translating, or registering of any document presented or deposited under its provisions, endorses, copies, translates, or registers such document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause, injury, as defined in the Indian Penal Code, to any person, shall be punished with imprisonment for a term which may extend to seven years, or with fine, or with both.

82. Whoever commits any of the following offences shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both:

(a) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or inquiry under this Act;

(b) intentionally delivers to a registering officer, in any proceeding under section 10 or section 21, a false copy or translation of a document, or a false copy of a map or plan;

(c) falsely personates another, and in such assumed character presents any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or enquiry under this Act;

(d) abets within the meaning of the Indian Penal Code anything made punishable by this Act.

83. A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be commenced by or with the permission of the Inspector-General, the Branch Inspector-General of Sindh, the Registrar, or the

106. In section 83 of the same Act, for the words "Subordinate Magistrate of the first," the words "Magistrate of the second" shall be substituted.

Sub-Registrar, in whose territories, district, or sub-district, as the case may be, the offence has been committed.

Offences punishable under this Act shall be triable by any Court or officer exercising powers not less than those of a Subordinate Magistrate of the first class :

Provided that, in imposing penalties under this Act, no such Court or officer shall exceed the limits of jurisdiction prescribed by the law for the time being in force as to such Court or officer.

All fines imposed under this Act may be recovered, if for offences committed outside the limits of the Presidency-towns, in the manner prescribed by the Code of Criminal Procedure, and if for offences committed within those limits, in the manner prescribed by any Act regulating the Police of such towns for the time being in force.

Registering officers to be deemed public servants.

84. Every registering officer appointed under this Act shall be deemed a public servant within the meaning of the Indian Penal Code.

Every person shall be legally bound to furnish information to such registering officer when required by him to do so. And in section 228 of the same Code, the words "judicial proceeding" shall include any proceeding under this Act.

A Registrar shall, but a Sub-Registrar shall not, as such, be deemed a Court within the meaning of sections 435 and 436 of the Code of Criminal Procedure.

PART XV.

MISCELLANEOUS.

Destruction of unclaimed documents.

85. Documents (other than wills) remaining unclaimed in any registration-office, for a period exceeding two years, may be destroyed.

Registering officer not liable for thing *bona fide* done or refused in his official capacity.

86. No registering officer shall be liable to any suit, claim, or demand by reason of anything in good faith done or refused in his official capacity.

Nothing so done invalidated by defect in appointment or procedure.

87. Nothing done in good faith pursuant to this Act, or any Act hereby repealed, by any registering officer, shall be deemed invalid merely by reason of any defect in his appointment or procedure.

88. Notwithstanding anything herein contained, it shall not be necessary for any officer of Government, or for the Administrator-General of Bengal, Madras, or Bombay, or for any Official Trustee, or Official Assignee, or for the Sheriff, Receiver, or Registrar of a High Court, to appear in person or by agent at any registration-office in any proceed-

ing connected with the registration of any instrument executed by him in his official capacity, or to sign as provided in section 58.

But when any instrument is so executed, the registering officer to whom such instrument is presented for registration may, if he think fit, refer to any Secretary to Government or to such officer of Government, Administrator-General, Official Trustee, Official Assignee, Sheriff, Receiver, or Registrar, as the case may be, for information respecting the same, and, on being satisfied of the execution thereof, shall register the instrument.

89. Every officer granting a certificate under the Land Improvement Certificates under Land Act, 1871, shall send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the land to be improved, or of the land to be granted as collateral security, is situate, and such registering officer shall file the certificate in his Book No. 1.

Exemptions from Act.

90. Nothing contained in this Act, or in Act No. VIII of 1871, or in any Act thereby repealed, shall be deemed to require, or to have at any time required, the registration of any of the following documents or maps :—

(a.) Documents issued, received, or attested by any officer engaged in making a settlement or revision of settlement of land-revenue, and which form part of the records of such settlement.

(b.) Documents and maps issued, received, or authenticated by any officer engaged on behalf of Government in making or revising the survey of any land, and which form part of the record of such survey.

(c.) Documents which, under any law for the time being in force, or filed periodically in any revenue-office by patwáris or other officers charged with the preparation of village-records.

(d.) Sanads, inám title-deeds, and other documents purporting to be or to evidence grants or assignments by Government of land or of any interest in land.

But all such documents and maps shall, for the purposes of sections 48 and 49, be deemed to have been and to be registered in accordance with the provisions of this Act.

91. Subject to such rules and the previous payment of such fees as the Local Government from time to time prescribes in this behalf, all documents and maps mentioned in section 90, clause a, b, and c, and all registers of the documents mentioned in clause d, shall be open to the inspection of any person applying to inspect the same, and, subject as aforesaid, copies of such documents shall be given to all persons applying for such copies.

92. All rules relating to registration heretofore enforced in British Burma shall be deemed to have had the force of law, and no suit or other proceeding shall be maintained against any officer or other person in respect of anything done under any of the said rules.

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THE INDIAN LIMITATION ACT.

No. XV. OF 1877.

Received the Governor-General's assent on the 19th July 1877.

AN ACT FOR THE LIMITATION OF SUITS, AND FOR OTHER PURPOSES.

WHEREAS it is expedient to amend the law relating to the limitation of suits, appeals, and certain applications to Courts; And whereas it is also expedient to provide rules for acquiring by possession the ownership of easements and other property; It is hereby enacted as follows :—

Preamble.

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as The Indian Limitation Act, 1877.

It extends to the whole of British India; but nothing contained in sections two and three or in Parts II and III applies—

Extent of Act.

- (a) to suits under the Indian Divorce Act, or
- (b) to suits under Madras Regulation VI of 1831;

Commencement.

And it shall come into force on the first day of October 1877.

2. On and from that day the Acts mentioned in the first schedule hereto annexed shall be repealed to the extent therein specified.

Repeal of Acts.

But all references to the Indian Limitation Act, 1871, shall be read as if made to this Act; and nothing herein or in that Act contained shall be

References to Act IX of 1871.

deemed to affect any title acquired, or to revive any right to sue barred, under that Act or under any enactment thereby repealed; and nothing herein

Saving of titles already acquired.

contained shall be deemed to affect the Indian Contract Act, section 25.

Saving of Act IX of 1872, s. 25.

Notwithstanding anything herein contained, any suit mentioned in No. 146 of the second schedule hereto annexed may be brought within five years next after the said first day of October 1877, unless where the period prescribed for such suit by the said Indian Limitation Act, 1871, shall have expired before the completion of the said five years, and any other suit for which the period of limitation prescribed by this Act is

Suits for which period prescribed by this Act is shorter than that prescribed by Act IX of 1871.

shorter than the period of limitation prescribed by the said Indian Limitation Act, 1871, may be brought within two years next after the said first day of October 1877, unless where the period prescribed for such suit by the same Act shall have expired before the completion of the said two years.

Interpretation-clause. 3. In this Act, unless there be something repugnant in the subject or context,

'plaintiff' includes also any person from or through whom a plaintiff derives his right to sue; 'applicant' includes also any person from or through whom an applicant derives his right to apply; and 'defendant' includes also any person from or through whom a defendant derives his liability to be sued:

'easement' includes also a right, not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another, or any thing growing in, or attached to, or subsisting upon, the land of another:

'bill of exchange' includes also a hundi and a cheque:

'bond' includes any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be:

'promissory note' means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight:

'trustee' does not include a benāmidār, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrong-doer in possession without title:

'suit' does not include an appeal or an application:

'registered' means duly registered in British India under the law for the registration of documents in force at the time and place of executing the document, or signing the decree or order, referred to in the context:

'foreign country' means any country other than British India;

and nothing shall be deemed to be done in 'good faith' which is not done with due care and attention.

PART II.

LIMITATION OF SUITS, APPEALS, AND APPLICATIONS.

4. Subject to the provisions contained in sections five to twenty-five (inclusive), every suit instituted, appeal presented, Dismissal of suits, &c., instituted, &c., after period of limitation. prescribed therefor by the second schedule hereto annexed, shall be dismissed, although limitation has not been set up as a defence.

Explanation.—A suit is instituted in ordinary cases when the plaint is presented to the proper officer; in the case of a pauper, when his application for leave to sue as a pauper is filed; and in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator.

Illustrations.

(a.) A suit is instituted after the prescribed period of limitation. Limitation is not set up as a defence, and judgment is given for the plaintiff. The defendant appeals. The appellate court must dismiss the suit.

(b.) An appeal presented after the prescribed period is admitted and registered. The appeal shall, nevertheless, be dismissed.

5. If the period of limitation prescribed for any suit, appeal, or application, **Provido** where Court is closed when period expires. expires on a day when the Court is closed, the suit, appeal, or application may be instituted, presented, or made on the day the Court re-opens ;

Any appeal or application for a review of judgment may be admitted after **Provido** as to appeals and the period of limitation prescribed therefor, when the applications for review. appellant or applicant satisfies the Court that he had sufficient cause for not presenting the appeal or making the application within such period.

6. When, by any special or local law now or hereafter in force in British Special and local laws of India, a period of limitation is specially prescribed limitation. for any suit, appeal, or application, nothing herein contained shall affect or alter the period so prescribed.

7. If a person entitled to institute a suit or make an application be, Legal disability. at the time from which the period of limitation is to be reckoned, a minor, or insane, or an idiot, he may institute the suit or make the application within the same period, after the disability has ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the second schedule hereto annexed.

When he is, at the time from which the period of limitation is to be reckoned, affected by two such disabilities, or when, before Double and successive disabilities. his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period after both disabilities have ceased as would otherwise have been allowed from the time so prescribed.

When his disability continues up to his death his legal representative may institute the suit or make the application within the same period after the death as would otherwise have been allowed from the time so prescribed.

When such representative is at the date of the death affected by any such Disability of representative. disability, the rules contained in the first two paragraphs of this section shall apply.

Nothing in this section applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period within which any suit must be instituted or application made.

Illustrations.

(a.) The right to sue for the hire of a boat accrues to A during his minority. He attains majority four years after such accruer.* He may institute his suit at any time within three years from the date of his attaining majority.

(b.) A, to whom a right to sue for a legacy has accrued during his minority, attains majority eleven years after such accruer. A has, under the ordinary law, only one year remaining within which to sue. But under this section an extension of two years will be allowed him, making in all a period of three years from the date of his attaining majority within which he may bring his suit.

(c.) A right to sue accrues to Z during his minority. After the accruer, but while Z is still a minor, he becomes insane. Time runs against Z from the date when his insanity and minority cease.

(d.) A right to sue accrues to X during his minority. X dies before attaining majority, and is succeeded by Y, his minor son. Time runs against Y from the date of his attaining majority.

(e.) A right to sue for an hereditary office accrues to A, who at the time is insane. Six years after the accruer A recovers his reason. A has six years, under the ordinary law, from the date when his insanity ceased within which to institute a suit. No extension of time will be given him under this section.

(f.) A right to sue as landlord to recover possession from a tenant accrues to A who is an idiot. A dies three years after the accrual, his idiocy continuing up to the date of his death. A's representative in interest has, under the ordinary law, nine years from the date of A's death within which to bring a suit. This section does not extend that time, except where the representative is himself under disability when the representation devolves upon him.

8. When one of several joint creditors or claimants is under any such disability, and when a discharge can be given without the concurrence of such person, time will run against them all: but where no such discharge can be given, time will not run, as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others.

Illustrations.

(a.) A incurs a debt to a firm of which B, C, and D are partners. B is insane, and C is a minor. D can give a discharge of the debt without the concurrence of B and C. Time runs against B, C, and D.

(b.) A incurs a debt to a firm of which E, F, and G are partners. E and F are insane, and G is a minor. Time will not run against any of them until either E or F becomes sane, or G attains majority.

9. When once time has begun to run, no subsequent disability or inability to sue stops it:

Provided that where letters of administration to the estate of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues.

10. Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration) for the purpose of following in his or their hands such property, shall be barred by any length of time.

11. Suits instituted in British India on contracts entered into in a foreign country are subject to the rules prescribed by this Act.

Suits on foreign contracts. No foreign rule of limitation shall be a defence to a suit instituted in British India on a contract entered into in a foreign country, unless the rule has extinguished the contract, and the parties were domiciled in such country during the period prescribed by such rule.

PART III.

COMPUTATION OF PERIOD OF LIMITATION.

12. In computing the period of limitation prescribed for any suit, appeal, or application, the day from which such period is to be reckoned shall be excluded.

Exclusion of day on which right to sue accrues. In computing the period of limitation prescribed for an appeal, an application for leave to appeal as a pauper, and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence, or order appealed against or sought to be reviewed, shall be excluded.

Where a decree is appealed against or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded.

In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

Exclusion of time of defendant's absence from British India.

13. In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from British India shall be excluded.

14. In computing

Exclusion of time of proceeding *bona fide* in Court without jurisdiction.

the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action, and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

In computing the period of limitation prescribed for a suit, proceedings

Like exclusion in case of order under Civil Procedure Code, s. 20.

in which have been stayed by order under the Code of Civil Procedure, section 20, the interval between the institution of the suit and the date of so staying proceedings, and the time requisite for going from the Court in which proceedings are stayed to the Court in which the suit is re-instituted, shall be excluded.

In computing the period of limitation prescribed for any application, the

Like exclusion in case of application.

time during which the applicant has been making another application for the same relief shall be excluded, where the last-mentioned application is made in good faith to a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to grant it.

Explanation 1.—In excluding the time during which a former suit or application was pending or being made, the day on which that suit or application was instituted or made, and the day on which the proceedings therein ended, shall both be counted.

Explanation 2.—A plaintiff resisting an appeal presented on the ground of want of jurisdiction shall be deemed to be prosecuting a suit within the meaning of this section.

15. In computing

Exclusion of time during which commencement of suit is stayed by injunction or order.

the period of limitation prescribed for any suit, the institution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

16. In computing

Exclusion of time during which judgment-debtor is attempting to set aside execution-sale.

the period of limitation prescribed for a suit for possession by a purchaser at a sale in execution of a decree, the time during which the judgment-debtor has been prosecuting a proceeding to set aside the sale shall be excluded.

17. When a person

Effect of death before right to sue accrues.

who would, if he were living, have a right to institute a suit or make an application, dies before the right accrues, the period of limitation shall be com-

puted from the time when there is a legal representative of the deceased capable of instituting or making such suit or application.

When a person against whom, if he were living, a right to institute a suit or make an application would have accrued, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased against whom the plaintiff may institute or make such suit or application.

Nothing in the former part of this section applies to suits to enforce rights of pre-emption or to suits for the possession of immoveable property or of an hereditary office.

18. When any person having a right to institute a suit or make an application has, by means of fraud, been kept from the knowledge of such right, or of the title on which it is founded,

Effect of fraud.

or where any document necessary to establish such right has been fraudulently concealed from him,

the time limited for instituting a suit or making an application

(a) against the person guilty of the fraud or accessory thereto, or

(b) against any person claiming through him otherwise than in good faith and for a valuable consideration,

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production.

19. If before the expiration of the period prescribed for a suit or application

in respect of any property or right an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a new period of limitation, according to the nature of the original liability, shall be computed from the time when the acknowledgment was so signed.

When the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but oral evidence of its contents shall not be received.

Explanation 1.—For the purposes of this section an acknowledgment may be sufficient, though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance, or enjoyment, has not yet come, or is accompanied by a refusal to pay, deliver, perform, or permit to enjoy, or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right.

Explanation 2.—In this section “signed” means signed either personally or by an agent duly authorized in this behalf.

20. When interest on a debt or legacy is, before the expiration of the

prescribed period, paid as such by the person liable to pay the debt or legacy, or by his agent duly authorized in this behalf,

or when part of the principal of a debt is, before the expiration of the

prescribed period, paid by the debtor or by his agent duly authorized in this behalf,

a new period of limitation, according to the nature of the original liability, shall be computed from the time when the payment was made :

Provided that, in the case of part-payment of the principal of a debt, the fact of the payment appears in the hand-writing of the person making the same.

Where mortgaged land is in the possession of the mortgagee, the receipt of the produce of such land shall be deemed to be a payment for the purpose of this section.

21. Nothing in sections 19 and 20 renders one of several joint contractors, partners, executors, or mortgagees chargeable by reason only of a written acknowledgment signed, or of a payment made by, or by the agent of, any other or others of them.

22. When, after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party :

Provided that, when a plaintiff dies, and the suit is continued by his legal representative, it shall, as regards him, be deemed to have been instituted when it was instituted by the deceased plaintiff.

Provided also that, when a defendant dies, and the suit is continued against his legal representative, it shall, as regards him, be deemed to have been instituted when it was instituted against the deceased defendant.

23. In the case of a continuing breach of contract and in the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues.

24. In the case of a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results.

Illustrations.

(a.) A owns the surface of a field. B owns the subsoil. B digs coal thereout without causing any immediate apparent injury to the surface, but at last the surface subsides. The period of limitation in the case of a suit by A against B runs from the time of the subsidence.

(b.) A speaks and publishes of B slanderous words not actionable in themselves without special damages caused thereby. C in consequence refuses to employ B as his clerk. The period of limitation in the case of a suit by B against A for compensation for the slander does not commence till the refusal.

25. All instruments shall, for the purposes of this Act, be deemed to be made with reference to the Gregorian calendar.

Illustrations.

(a.) A Hindú makes a promissory note bearing a native date only, and payable four months after date. The period of limitation applicable to a suit on the note runs from the expiry of four months after date computed according to the Gregorian calendar.

(b.) A Hindú makes a bond, bearing a native date only, for the repayment of money within one year. The period of limitation applicable to a suit on the bond runs from the expiry of one year after date computed according to the Gregorian calendar.

THE INDIAN LIMITATION ACT.

PART IV.

ACQUISITION OF OWNERSHIP BY POSSESSION.

26. Where the access and use of light or air ^{to} and for any building
Acquisition of right to have been peaceably enjoyed therewith, as an ease-
easements. ment, and as of right, without interruption, and for
twenty years,

and where any way or watercourse, or the use of any water, or any other
easement (whether affirmative or negative), has been peaceably and openly enjoy-
ed by any person claiming title thereto, as an easement and as of right, without
interruption, and for twenty years,

the right to such access and use of light or air, way, watercourse, use of
water, or other easement, shall be absolute and indefeasible.

Each of the said periods of twenty years shall be taken to be a period
ending within two years next before the institution of the suit wherein the claim
to which such period relates is contested.

Explanation.—Nothing is an interruption within the meaning of this
section, unless where there is an actual discontinuance of the possession or en-
joyment by reason of an obstruction by the act of some person other than the
claimant, and unless such obstruction is submitted to or acquiesced in for one
year after the claimant has notice thereof and of the person making or authoriz-
ing the same to be made.

Illustrations.

(a) A suit is brought in 1881 for obstructing a right of way. The defendant admits
the obstruction, but denies the right of way. The plaintiff proves that the right was
peaceably and openly enjoyed by him, claiming title thereto as an easement and as of right,
without interruption, from 1st January 1860 to 1st January 1880. The plaintiff is entitled
to judgment.

(b.) In a like suit, also brought in 1881, the plaintiff merely proves that he enjoyed
the right in manner aforesaid from 1853 to 1878. The suit shall be dismissed, as no exer-
cise of the right by actual user, has been proved to have taken place within two years
next before the institution of the suit.*

(c.) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed
by him for twenty years. The defendant proves that the plaintiff on one occasion during
the twenty years had asked his leave to enjoy the right. The suit shall be dismissed.

27. Provided that, when any land or water upon, over, or from which
any easement has been enjoyed or derived has been
Exclusion in favour of re- held under or by virtue of any interest for life or
versioner of servient tene- any term of years exceeding three years from the
ment.
wanting thereof, the time of the enjoyment of such easement during the
continuance of such interest or term shall be excluded in the computation of
the said last-mentioned period of twenty years, in case the claim is, within
three years next after the determination of such interest or term, resisted by the
person entitled, on such determination, to the said land or water.

Illustration.

A sues for a declaration that he is entitled to a right of way over B's land. A proves
that he has enjoyed the right for twenty-five years; but B shows that, during ten of these
years, C, a Hindú widow, had a life-interest in the land, that on C's death B became entitled
to the land, and that within two years after C's death he contested A's claim to the right.
The suit must be dismissed, as A, with reference to the provisions of this section, has only
proved enjoyment for fifteen years.

28. At the determination of the period hereby limited to any person for
Extinguishment of right instituting a suit for possession of any property,
to property. his right to such property shall be extinguished.

THE FIRST SCHEDULE.

| Number and year of Acts. | Title. | Extent of Repeal. |
|--------------------------|----------------------------------|--|
| X of 1865 ... | The Indian Succession Act | In section 321 the words "within two years after the death of the testator, or one year after the legacy has been paid." |
| IX of 1871 ... | The Indian Limitation Act, 1871. | The whole. |
| X of 1877 ... | The Code of Civil Procedure. | Section 599, and in section 601 the words "within thirty days from the date of the order." |

THE SECOND SCHEDULE.

(See section 4.)

First Division : Suits—

| Description of suit. | Period of limitation. | Time from which period begins to run. |
|--|------------------------------|---|
| | <i>Part I.—Thirty days.</i> | |
| 1.—To contest an award of the Board of Revenue under Act No. XXIII of 1863 (<i>to provide for the adjudication of claims to waste-lands</i>). | Thirty days ... | When notice of the award is delivered to the plaintiff. |
| | <i>Part II.—Ninety days.</i> | |
| 2.—For compensation for doing, or for omitting to do, an act in pursuance of any enactment in force for the time being in British India. | Ninety days ... | When the act or omission takes place. |
| | <i>Part III.—Six months.</i> | |
| 3.—Under the Specific Relief Act, 1877, section 9, to recover possession of immoveable property. | Six months ... | When the dispossession occurs. |
| 4.—Under Act No. IX of 1860 (<i>to provide for the speedy determination of certain disputes between workmen engaged in Railway and other public works and their employers</i>), section one. | Ditto ... | When the wages, hire, or price of work claimed accrue or accrues due. |

THE SECOND SCHEDULE—*continued.**First Division : Suits—continued.*

| Description of suit. | Period of limitation. | Time from which period begins to run. |
|---|------------------------------------|--|
| | <i>Part III.—Six months—contd.</i> | |
| 5.—Under the Code of Civil Procedure, chapter XXXIX (<i>Of summary procedure on negotiable instruments</i>). | Six months ... | When the instrument sued upon becomes due and payable. |
| | <i>Part IV.—One year.</i> | |
| 6.—Upon a Statute, Act, Regulation or Bye-law, for a penalty or forfeiture. | One year ... | When the penalty or forfeiture is incurred. |
| 7.—For the wages of a household servant, artisan, or labourer, not provided for by this schedule, No. 4. | Ditto ... | When the wages accrue due. |
| 8.—For the price of food or drink sold by the keeper of a hotel, tavern, or lodging-house. | Ditto ... | When the food or drink is delivered. |
| 9.—For the price of lodging ... | Ditto ... | When the price becomes payable. |
| 10.—To enforce a right of pre-emption, whether the right is founded on law, or general usage, or on special contract. | Ditto ... | When the purchaser takes, under the sale sought to be impeached, physical possession of the whole of the property sold, or where the subject of the sale does not admit of physical possession, when the instrument of sale is registered. |
| 11.—By a person against whom an order is passed under section 280, 281, 282, or 335 of the Code of Civil Procedure to establish his right to, or to the present possession of, the property comprised in the order. | Ditto ... | The date of the order. |
| 12.—To set aside any of the following sales :— (a) sale in execution of a decree of a Civil Court ; | Ditto ... | When the sale is confirmed or would otherwise have become final and conclusive had no such suit been brought. |

THE SECOND SCHEDULE—*continued.**First Division: Suits—continued.*

| Description of suit. | Period of limitation. | Time from which period begins to run. |
|--|-----------------------|---|
| <p><i>Part IV.—One year—continued.</i></p> <p><i>b)</i> sale in pursuance of a decree or order of a Collector or other officer of revenue ;</p> <p><i>c)</i> sale for arrears of Government revenue, or for any demand recoverable as such arrears ;</p> <p><i>d)</i> sale of a <i>patni taluq</i> sold for current arrears of rent.</p> <p><i>Explanation.</i>—In this clause ‘<i>patni</i>’ includes any intermediate tenure saleable for current arrears of rent.</p> | | |
| 13.—To alter or set aside a decision or order of a Civil Court in any proceeding other than a suit. | One year | ... The date of the final decision or order in the case by a Court competent to determine it finally. |
| 14.—To set aside any act or order of an officer of Government in his official capacity, not herein otherwise expressly provided for. | Ditto | ... The date of the act or order. |
| 15.—Against Government to set aside any attachment, lease, or transfer of immovable property by the revenue authorities for arrears of Government revenue. | Ditto | ... When the attachment, lease, or transfer is made. |
| 16.—Against Government to recover money paid under protest in satisfaction of a claim made by the revenue authorities on account of arrears of revenue or on account of demands recoverable as such arrears. | Ditto | ... When the payment is made. |
| 17.—Against Government for compensation for land acquired for public purposes. | Ditto | ... The date of determining the amount of the compensation. |
| 18.—Like suit for compensation when the acquisition is not completed. | Ditto | ... The date of the refusal to complete. |

THE SECOND SCHEDULE—*continued.**First Division: Suits—continued.*

| Description of suit. | Period of limitation. | Time from which period begins to run. |
|---|--|--|
| 19.—For compensation for false imprisonment. | <i>Part IV—One year—continued.</i> One year ... | When the imprisonment ends. |
| 20.—By executors, administrators, or representatives under Act No. XII of 1855 (<i>to enable the executors, administrators, or representatives to sue and be sued for certain wrongs</i>). | Ditto ... | The date of the death of the person wronged. |
| 21.—By executors, administrators, or representatives under Act No. XIII of 1855 (<i>to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong</i>). | Ditto ... | The date of the death of the person killed. |
| 22.—For compensation for any other injury to the person. | Ditto ... | When the injury is committed. |
| 23.—For compensation for a malicious prosecution. | Ditto ... | When the plaintiff is acquitted, or the prosecution is otherwise terminated. |
| 24.—For compensation for libel ... | Ditto ... | When the libel is published. |
| 25.—For compensation for slander... | Ditto ... | When the words are spoken, or, when the words are not actionable in themselves, when the special damage complained of results. |
| 26.—For compensation for loss of service occasioned by the seduction of the plaintiff's servant or daughter. | Ditto ... | When the loss occurs. |
| 27.—For compensation for inducing a person to break a contract with the plaintiff. | Ditto ... | The date of the breach. |
| 28.—For compensation for an illegal, irregular, or excessive distress. | Ditto ... | The date of the distress. |
| 29.—For compensation for wrongful seizure of moveable property under legal process. | Ditto ... | The date of the seizure. |

THE SECOND SCHEDULE—continued.

First Division: Suits—continued.

| Description of suit. | Period of limitation. | Time from which period begins to run. |
|--|-----------------------|---|
| <i>Part V.—Two years.</i> | | |
| 30.—Against a carrier for compensation for losing or injuring goods. | Two years ... | When the loss or injury occurs. |
| 31.—Against a carrier for compensation for delay in delivering goods. | Ditto ... | When the goods ought to be delivered. |
| 32.—Against one who, having a right to use property for specific purposes, perverts it to other purposes. | Ditto ... | When the perversion first becomes known to the person injured thereby. |
| 33.—Under Act No. XII of 1855 (to enable executors, administrators, or representatives to sue and be sued for certain wrongs) against an executor, administrator, or other representative. | Ditto ... | When the wrong complained of is done. |
| 34.—For the recovery of a wife ... | Ditto ... | When possession is demanded and refused. |
| 35.—For the restitution of conjugal rights. | Ditto ... | When restitution is demanded and is refused by the husband or wife, being of full age and sound mind. |
| 36.—For compensation for any malfeasance, misfeasance, or nonfeasance independent of contract, and not herein specially provided for. | Ditto ... | When the malfeasance, misfeasance, or nonfeasance takes place. |
| <i>Part VI.—Three years.</i> | | |
| 37.—For compensation for obstructing a way or a watercourse. | Three years ... | The date of the obstruction. |
| 38.—For compensation for diverting a watercourse. | Ditto ... | The date of the diversion. |
| 39.—For compensation for trespass upon immoveable property. | Ditto ... | The date of the trespass. |

THE SECOND SCHEDULE—continued.

First Division: Suits—continued.

| Description of suit. | Period of limitation. | Time from which period begins to run. |
|---|------------------------------------|--|
| | <i>Part VI.—Three years—contd.</i> | |
| 40.—For compensation for infringing copyright or any other exclusive privilege. | Three years ... | The date of the infringement. |
| 41.—To restrain waste ... | Ditto ... | When the waste begins. |
| 42.—For compensation for injury caused by an injunction wrongfully obtained. | Ditto ... | When the injunction ceases. |
| 43.—Under the Indian Succession Act, 1865, section 320 or 321, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets. | Ditto ... | The date of the payment or distribution. |
| 44.—By a ward who has attained majority, to set aside a sale by his guardian. | Ditto ... | When the ward attains majority. |
| 45.—To contest an award under any of the following Regulations of the Bengal Code :— VII of 1822, IX of 1825, and IX of 1833. | Ditto ... | The date of the final award or order in the case. |
| 46.—By a party bound by such award to recover any property comprised therein. | Ditto ... | The date of the final award or order in the case. |
| 47.—By any person bound by an order respecting the possession of property made under the Code of Criminal Procedure, chapter XL, or the Bombay Mámlatdárs' Courts Act, or by any one claiming under such person, to recover the property comprised in such order. | Ditto ... | The date of the final order in the case. |
| 48.—For specific moveable property lost, or acquired by theft, or dishonest misappropriation or conversion, or for compensation for wrongfully taking or detaining the same. | Ditto ... | When the person having the right to the possession of the property first learns in whose possession it is. |

THE SECOND SCHEDULE—continued.

First Division : Suits—continued.

| Description of suit. | Period of limitation. | Time from which period begins to run. |
|--|-----------------------------------|---|
| | <i>Part VI—Three years—contd.</i> | |
| 49.—For other specific moveable property, or for compensation for wrongfully taking or injuring or wrongfully detaining the same. | Three years ... | When the property is wrongfully taken or injured, or when the detainer's possession becomes unlawful. |
| 50.—For the hire of animals, vehicles, boats, or household furniture. | Ditto ... | When the hire becomes payable. |
| 51.—For the balance of money advanced in payment of goods to be delivered. | Ditto ... | When the goods ought to be delivered. |
| 52.—For the price of goods sold and delivered where no fixed period of credit is agreed upon. | Ditto ... | The date of the delivery of the goods. |
| 53.—For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit. | Ditto ... | When the period of credit expires. |
| 54.—For the price of goods sold and delivered to be paid for by a bill of exchange, no such bill being given. | Ditto ... | When the period of the proposed bill elapses. |
| 55.—For the price of trees or growing crops sold by the plaintiff to the defendant where no fixed period of credit is agreed upon. | Ditto ... | The date of the sale. |
| 56.—For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment. | Ditto ... | When the work is done. |
| 57.—For money payable for money lent. | Ditto ... | When the loan is made. |
| 58.—Like suit when the lender has given a cheque for the money. | Ditto ... | When the cheque is paid. |
| 59.—For money lent under an agreement that it shall be payable on demand. | Ditto ... | When the loan is made. |

THE SECOND SCHEDULE—*continued.**First Division: Suits—continued.*

| Description of suit. | Period of limitation. | Time from which period begins to run. |
|---|------------------------------------|---|
| | <i>Part VI.—Three years—contd.</i> | |
| 60.—For money deposited under an agreement that it shall be payable on demand. | Three years ... | When the demand is made. |
| 61.—For money payable to the plaintiff for money paid for the defendant. | Ditto ... | When the money is paid. |
| 62.—For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use. | Ditto ... | When the money is received. |
| 63.—For money payable for interest upon money due from the defendant to the plaintiff. | Ditto ... | When the interest becomes due. |
| 64.—For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them. | Ditto ... | When the accounts are stated in writing, signed by the defendant or his agent duly authorised in this behalf, unless where the debt is, by a simultaneous agreement in writing signed as aforesaid, made payable at a future time, and then when that time arrives. |
| 65.—For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency. | Ditto ... | When the time specified arrives or the contingency happens. |
| 66.—On a single bond where a day is specified for payment. | Ditto ... | The day so specified. |
| 67.—On a single bond where no such day is specified. | Ditto ... | The date of executing the bond. |
| 68.—On a bond subject to a condition. | Ditto ... | When the condition is broken. |
| 69.—On a bill of exchange or promissory note payable at a fixed time after date. | Ditto ... | When the bill or note falls due. |
| 70.—On a bill of exchange payable at sight, or after sight, but not at a fixed time. | Ditto ... | When the bill is presented. |
| 71.—On a bill of exchange accepted payable at a particular place. | Ditto ... | When the bill is presented at that place. |

THE SECOND SCHEDULE—continued.

First Division: Suits—continued.

| Description of suit. | Period of limitation. | Time from which period begins to run. |
|--|------------------------------------|---|
| | <i>Part VI.—Three years—contd.</i> | |
| 72.—On a bill of exchange or promissory note payable at a fixed time after sight or after demand. | Three years ... | When the fixed time expires. |
| 73.—On a bill of exchange or promissory note payable on demand, and not accompanied by any writing restraining or postponing the right, to sue. | Ditto ... | The date of the bill or note. |
| 74.—On a promissory note or bond payable by instalments. | Ditto ... | The expiration of the first term of payment, as to the part then payable; and, for the other parts, the expiration of the respective terms of payment. |
| 75.—On a promissory note or bond payable by instalments, which provides that, if default be made in payment of one instalment, the whole shall be due. | Ditto ... | When the first default is made, unless where the payee or obligee waives the benefit of the provision, and then when fresh default is made in respect of which there is no such waiver. |
| 76.—Or a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen. | Ditto ... | The date of the delivery to the payee. |
| 77.—On a dishonoured foreign bill where protest has been made and notice given. | Ditto ... | When the notice is given. |
| 78.—By the payee against the drawer of a bill of exchange which has been dishonoured by non-acceptance. | Ditto ... | The date of the refusal to accept. |
| 79.—By the acceptor of an accommodation bill against the drawer. | Ditto ... | When the acceptor pays the amount of the bill. |

THE SECOND SCHEDULE—*continued.**First Division : Suits—continued.*

| Description of ^{suit} application. | Period of limitation. | Time from which period begins to run. |
|---|-----------------------|---|
| <i>Part VI.—Three years—contd.</i> | | |
| 80.—Suit on a bill of exchange, promissory note, or bond not herein expressly provided for. | Three years ... | When the bill, note, or bond becomes payable. |
| 81.—By a surety against the principal debtor. | Ditto ... | When the surety pays the creditor. |
| 82.—By a surety against a co-surety | Ditto ... | When the surety pays anything in excess of his own share. |
| 83.—Upon any other contract to indemnify. | Ditto ... | When the plaintiff is actually damaged. |
| 84.—By an attorney or vakil for his costs of a suit or a particular business, there being no express agreement as to the time when such costs are to be paid. | Ditto ... | The date of the termination of the suit or business, or (where the attorney or vakil properly discontinues the suit or business) the date of such discontinuance. |
| 85.—For the balance due on a mutual, open, and current account, where there have been reciprocal demands between the parties. | Ditto ... | The close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account. |
| 86.—On a policy of insurance when the sum assured is payable immediately after proof of the death or loss has been given to or received by the insurers. | Ditto ... | When proof of the death or loss is given or received to or by the insurers, whether by or from the plaintiff or any other person. |
| 87.—By the assured to recover premium paid under a policy voidable at the election of the insurers. | Ditto ... | When the insurers elect to avoid the policy. |
| 88.—Against a factor for an account | Ditto ... | When the account is, during the continuance of the agency, demanded and refused, or, where no such demand is made, when the agency terminates. |
| 89.—By a principal against his agent for moveable property received by the latter and not accounted for. | Ditto ... | Ditto. |

SECOND SCHEDULE.

THE SECOND SCHEDULE—continued.

First Division: Suits—continued.

| Description of ^{suit} application. | Period of limitation. | Time from which period begins to run. |
|--|------------------------------------|---|
| | <i>Part VI.—Three years—contd.</i> | |
| 90.—Other suits by principals against agents for neglect or misconduct. | Three years ... | When the neglect or misconduct becomes known to the plaintiff. |
| 91.—To cancel or set aside an instrument not otherwise provided for. | Ditto ... | When the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him. |
| 92.—To declare the forgery of an instrument issued or registered. | Ditto ... | When the issue or registration becomes known to the plaintiff. |
| 93.—To declare the forgery of an instrument attempted to be enforced against the plaintiff. | Ditto ... | The date of the attempt. |
| 94.—For property which the plaintiff has conveyed while insane. | Ditto ... | When the plaintiff is restored to sanity, and has knowledge of the conveyance. |
| 95.—To set aside a decree obtained by fraud, or for other relief on the ground of fraud. | Ditto ... | When the fraud becomes known to the party wronged. |
| 96.—For relief on the ground of mistake. | Ditto ... | When the mistake becomes known to the plaintiff. |
| 97.—For money paid upon an existing consideration which afterwards fails. | Ditto ... | The date of the failure. |
| 98.—To make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust. | Ditto ... | The date of the trustee's death; or, if the loss has not then resulted, the date of the loss. |
| 99.—For contribution by a party who has paid the whole amount due under a joint decree, or by a sharer in a joint estate who has paid the whole amount of revenue due from himself and his co-sharers. | Ditto ... | The date of the plaintiff's advance in excess of his own share. |

THE INDIAN LIMITATION ACT.

THE SECOND SCHEDULE—*continued.*

First Division: Suits—continued.

| Description of application. | Period of limitation. | Time from which period begins to run. |
|---|-----------------------|--|
| <i>Part VI.—Three years—contd.</i> | | |
| 100.—By a co-trustee to enforce against the estate of a deceased trustee a claim for contribution. | Three years ... | When the right to contribution accrues. |
| 101.—For a seaman's wages. | Ditto ... | The end of the voyage during which the wages are earned. |
| 102.—For wages not otherwise expressly provided for by this schedule. | Ditto ... | When the wages accrue due. |
| 103.—By a Muhammadan for exigible dower (<i>mu'ajjal</i>). | Ditto ... | When the dower is demanded and refused, or (where during the continuance of the marriage no such demand has been made) when the marriage is dissolved by death or divorce. |
| 104.—By a Muhammadan for deferred dower (<i>mu'awajjal</i>). | Ditto ... | When the marriage is dissolved by death or divorce. |
| 105.—By a mortgagor after the mortgage has been satisfied, to recover surplus collections received by the mortgagee. | Ditto ... | When the mortgagor re-enters on the mortgaged property. |
| 106.—For an account and a share of the profits of a dissolved partnership. | Ditto ... | The date of the dissolution. |
| 107.—By the manager of a joint estate of an undivided family for contribution in respect of a payment made by him on account of the estate. | Ditto ... | The date of the payment. |
| 108.—By a lessor for the value of trees cut down by his lessee contrary to the terms of the lease. | Ditto ... | When the trees are cut down. |

THE SECOND SCHEDULE—continued.

First Division: Suits—continued.

| Description of suit. | Period of limitation. | Time from which period begins to run. |
|---|------------------------------------|---|
| | <i>Part VI.—Three years—contd.</i> | |
| 109.—For the profits of immoveable property belonging to the plaintiff, which have been wrongfully received by the defendant. | Three years ... | When the profits are received, or, where the plaintiff has been dispossessed by a decree afterwards set aside on appeal, when he recovers possession. |
| 110.—For arrears of rent ... | Ditto ... | When the arrears become due. |
| 111.—By a vendor of immoveable property to enforce his lien for unpaid purchase-money. | Ditto ... | The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance. |
| 112.—For a call by a company registered under any Statute or Act. | Ditto ... | When the call is payable. |
| 113.—For specific performance of a contract. | Ditto ... | The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused. |
| 114.—For the rescission of a contract. | Ditto ... | When the facts entitling the plaintiff to have the contract rescinded first become known to him. |
| 115.—For compensation for the breach of any contract, express or implied, not in writing registered, and not herein specially provided for. | Ditto ... | When the contract is broken, or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs or (where the breach is continuing) when it ceases. |
| | <i>Part VII.—Six years.</i> | |
| 116.—For compensation for the breach of a contract in writing registered. | Six years ... | When the period of limitation would begin to run against a suit brought on a similar contract not registered. |

THE SECOND SCHEDULE—*continued.**First Division: Suits—continued.*

| Description of suit. | Period of limitation. | Time from which period begins to run. |
|---|-----------------------------------|--|
| | <i>Part VII.—Six years—contd.</i> | |
| 117.—Upon a foreign judgment as defined in the Code of Civil Procedure. | Six years ... | The date of the judgment. |
| 118.—To obtain a declaration that an alleged adoption is invalid, or never in fact took place. | Ditto ... | When the alleged adoption becomes known to the plaintiff. |
| 119.—To obtain a declaration that an adoption is valid. | Ditto ... | When the rights of the adopted son as such are interfered with. |
| 120.—Suit for which no period of limitation is provided elsewhere in this schedule. | Ditto ... | When the right to sue accrues. |
| | <i>Part VIII.—Twelve years.</i> | |
| 121.—To avoid incumbrances or under-tenures in an entire estate sold for arrears of Government revenue, or in a <i>patti taluq</i> or other saleable tenure sold for arrears of rent. | Twelve years ... | When the sale becomes final and conclusive. |
| 122.—Upon a judgment obtained in British India, or a recognizance. | Ditto ... | The date of the judgment or recognizance. |
| 123.—For a legacy or for a share of a residue bequeathed by a testator, or for a distributive share of the property of an intestate. | Ditto ... | When the legacy or share becomes payable or deliverable. |
| 124.—For possession of an hereditary office. | Ditto ... | When the defendant takes possession of the office adversely to the plaintiff. <i>Explanation.</i> —An hereditary office is possessed when the profits thereof are usually received, or (if there are no profits) when the duties thereof are usually performed. |

THE SECOND SCHEDULE—continued.

First Division: Suits—continued.

| Description of suit. | Period of limitation. | Time from which period begins to run. |
|--|---|---|
| | <i>Part VIII.— Twelve years— continued.</i> | |
| 125.—Suit during the life of a Hindú or Muhammadan female by a Hindú or Muhammadan who, if the female died at the date of instituting the suit, would be entitled to the possession of land, to have an alienation of such land made by the female declared to be void except for her life or until her re-marriage. | Twelve years ... | The date of the alienation. |
| 126.—By a Hindú governed by the law of the Mitákshará to set aside his father's alienation of ancestral property. | Ditto ... | When the alienee takes possession of the property. |
| 127.—By a person excluded from joint-family property to enforce a right to share therein. | Ditto ... | When the exclusion becomes known to the plaintiff. |
| 128.—By a Hindú for arrears of maintenance. | Ditto ... | When the arrears are payable. |
| 129.—By a Hindú for a declaration of his right to maintenance. | Ditto ... | When the right is denied. |
| 130.—For the resumption of assessment of rent-free land. | Ditto ... | When the right to resume or assess the land first accrues. |
| 131.—To establish a periodically recurring right. | Ditto ... | When the plaintiff is first refused the enjoyment of the right. |
| 132.—To enforce payment of money charged upon immoveable property. | Ditto ... | When the money sued for becomes due. |
| <i>Explanation</i> —The allowance and fees respectively called <i>málikána</i> and <i>haqq</i> s shall, for the purpose of this clause, be deemed to be money charged upon immoveable property. | | |
| 133.—To recover moveable property conveyed or bequeathed in trust, deposited, or pawned, and afterwards bought from the trustee, depositary, or pawnee for a valuable consideration. | Ditto ... | The date of the purchase. |

THE SECOND SCHEDULE—*continued.**First Division: Suits—continued.*

| Description of suits. | Period of limitation. | Time from which period begins to run. |
|---|---|---|
| | <i>Part VIII.— Twelve years— continued.</i> | |
| 134.—To recover possession of immoveable property conveyed or bequeathed in trust or mortgaged, and afterwards purchased from the trustee or mortgagee, for a valuable consideration. | Twelve years ... | The date of the purchase. |
| 135.—Suit instituted in a Court not established by Royal Charter by a mortgagee for possession of immoveable property mortgaged. | Ditto | When the mortgagor's right to possession determines. |
| 136.—By a purchaser at a private sale for possession of immoveable property sold, when the vendor was out of possession at the date of the sale. | Ditto ... | When the vendor is first entitled to possession. |
| 137.—Like suit by a purchaser at a sale in execution of a decree, when the judgment-debtor was out of possession at the date of the sale. | Ditto ... | When the judgment-debtor is first entitled to possession. |
| 138.—By a purchaser of land at a sale in execution of a decree, for possession of the purchased land, when the judgment-debtor was in possession at the date of the sale. | Ditto ... | The date of the sale. |
| 139.—By a landlord to recover possession from a tenant. | Ditto ... | When the tenancy is determined. |
| 140.—By a remainderman, a reversioner (other than a landlord), or a devisee, for possession of immoveable property. | Ditto ... | When his estate falls into possession. |
| 141.—Like suit by a Hindú or Muhammadan entitled to the possession of immoveable property on the death of a Hindú or Muhammadan female. | Ditto ... | When the female dies. |

THE SECOND SCHEDULE—continued.

First Division: Suits—continued.

| Description of suits. | Period of limitation. | Time from which period begins to run. |
|--|--|---|
| <p>142.—For possession of immoveable property, when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession.</p> <p>143.—Like suit, when the plaintiff has become entitled by reason of any forfeiture or breach of condition.</p> <p>144.—For possession of immoveable property or any interest therein not hereby otherwise specially provided for.</p> | <p><i>Part VIII.— Twelve years— continued.</i></p> <p>Twelve years ...</p> | <p>The date of the dispo- session or discontinuance.</p> |
| | <p>Ditto ...</p> | <p>When the forfeiture is in- curred or the condition is broken.</p> |
| | <p>Ditto ...</p> | <p>When the possession of the defendant becomes adverse to the plaintiff.</p> |
| <p>145.—Against a depository or pawnee to recover moveable property deposited or pawned.</p> | <p><i>Part IX.— Thirty years.</i></p> <p>Thirty years ...</p> | <p>The date of the deposit or pawn.</p> |
| | <p>Ditto ...</p> | <p>When any part of the prin- cipal or interest was last paid on account of the mortgage debt.</p> |
| <p>147.—By a mortgagee for foreclo- sure or sale.</p> | <p><i>Part X.— Sixty years.</i></p> <p>Sixty years ...</p> | <p>When the money secured by the mortgage becomes due.</p> |
| <p>148.—Against a mortgagee to redeem or to recover possession of immoveable property mort- gaged.</p> | <p>Ditto ...</p> | <p>When the right to redeem or to recover possession accrues. Provided that all claims to redeem, arising under in- struments of mortgage of immoveable property situ- ate in British Burma, which have been executed before the first day of May 1863, shall be governed by the rules of limitation in force in that province immedi- ately before the same day.</p> |

THE SECOND SCHEDULE—*continued.**First Division: Suits—continued.*

| Description of suit. | Period of limitation. | Time from which period begins to run. |
|---|-----------------------------------|--|
| | <i>Part X.—Sixty years—contd.</i> | |
| 149.—Any suit by or on behalf of the Secretary of State for India in Council. | Sixty years ... | When the period of limitation would begin to run under this Act against a like suit by a private person. |

Second Division: Appeals.

| Description of appeal. | Period of limitation. | Time from which period begins to run. |
|--|-----------------------|---|
| 150.—Under the Code of Criminal Procedure from a sentence of death passed by a Sessions Judge. | Seven days ... | The date of the sentence. |
| 151.—From a decree or order of any of the High Courts of judicature at Fort William, Madras, and Bombay, in the exercise of its original jurisdiction. | Twenty days ... | The date of the decree or order |
| 152.—Under the Code of Civil Procedure to the Court of a District Judge. | Thirty days ... | The date of the decree or order appealed against. |
| 153.—Under the same Code, section 601, to a High Court. | Ditto ... | The date of the order refusing the certificate. |
| 154.—Under the Code of Criminal Procedure to any Court other than a High Court. | Ditto ... | The date of the sentence or order appealed against. |
| 155.—Under the same Code to a High Court except in the cases provided for by No. 150 and No. 157. | Sixty days ... | Ditto. |
| 156.—Under the Code of Civil Procedure to a High Court except in the cases provided for by No. 151 and No. 153. | Ninety days ... | The date of the decree or order appealed against. |
| 157.—Under the Code of Criminal Procedure from a judgment of acquittal. | Six months ... | The date of the judgment appealed against. |

THE SECOND SCHEDULE—*continued.**Third Division: Applications.*

| Description of application. | Period of limitation. | Time from which period begins to run. |
|--|-----------------------|---|
| 158.—Under the Code of Civil Procedure to set aside an award. | Ten days ... | When the award is submitted to the Court. |
| 159.—For leave to appear and defend a suit under Chapter XXXIX of the Code of Civil Procedure. | Ditto ... | When the summons is served. |
| 160.—For an order under section 629 of the same Code restoring to the file a rejected application for review | Fifteen days ... | When the application for review is rejected. |
| 161.—For an order under section 258 of the same Code compelling a decree-holder to certify payment or adjustment. | (Ditto) ... | When the payment or adjustment is made. |
| 162.—For a review of judgment by any of the High Courts of Judicature at Fort William, Madras, and Bombay, in the exercise of its original jurisdiction. | Twenty days ... | The date of the decree or order. |
| 163.—By a plaintiff for an order to set aside a dismissal by default. | Thirty days ... | The date of the dismissal. |
| 164.—By a defendant for an order to set aside a judgment <i>ex parte</i> . | Ditto ... | The date of executing any process for enforcing the judgment. |
| 165.—Under the Code of Civil Procedure, by a person dispossessed of immoveable property, and disputing the right of the decree-holder or purchaser at a sale in execution of a decree to be put into possession. | Ditto ... | The date of the dispossession. |
| 166.—To set aside a sale in execution of a decree, on the ground of irregularity in publishing or conducting the sale. | Ditto ... | The date of the sale. |

THE SECOND SCHEDULE—*continued.**Third Division: Applications—continued.*

| Description of application. | Period of limitation. | Time from which period begins to run. |
|--|-----------------------|--|
| 167.—Complaining of resistance or obstruction to delivery of possession of immoveable property decreed or sold in execution of a decree, or of dispossession in the delivery of possession to the decree-holder or the purchaser of such property. | Thirty days ... | The date of the resistance, obstruction, or dispossession. |
| 168.—For re-admission of an appeal dismissed for want of prosecution. | Ditto ... | The date of the dismissal. |
| 169.—For a re-hearing of an appeal heard <i>ex parte</i> in the absence of the respondent. | Ditto ... | The date of the decree in appeal. |
| 170.—For leave to appeal as a pauper. | Ditto ... | The date of the decree appealed against. |
| 171.—Under section 363 or 365 of the Code of Civil Procedure by a person claiming to be the legal representative of a deceased plaintiff. | Sixty days ... | The date of the plaintiff's death. |
| 172.—By a purchaser at an execution sale to set aside the sale on the ground that the person whose interest in the property purported to be sold had no saleable interest therein. | Ditto ... | The date of the sale. |
| 173.—For a review of judgment, except in the cases provided for by No. 162. | Ninety days ... | The date of the decree or order. |
| 174.—By a creditor of an insolvent judgment-debtor under section 353 of the Code of Civil Procedure. | Ditto ... | The date of the publication of the schedule. |
| 175.—For payment of the amount of a decree by instalments. | Six months ... | The date of the decree. |
| 176.—Under the Code of Civil Procedure, section 516 or 525, that an award be filed in Court. | Ditto ... | The date of the award. |

THE SECOND SCHEDULE—*continued.*
Third Division : Applications—continued.

| Description of application. | Period of limitation. | Time from which period begins to run. |
|---|--|---|
| 177.—For the admission of an appeal to Her Majesty in Council. | Six months ... | The date of the decree appealed against. |
| 178.—Applications for which no period of limitation is provided elsewhere in this schedule, or by the Code of Civil Procedure, section 230. | Three years ... | When the right to apply accrues. |
| 179.—For the execution of a decree or order of any Civil Court not provided for by No. 180 or by the Code of Civil Procedure, section 230. | Ditto ; or where a certified copy of the decree or order has been registered, six years. | <ol style="list-style-type: none"> 1. The date of the decree or order, or 2. (where there has been an appeal) the date of the final decree or order of the Appellate Court, or 3. (where there has been a review of judgment) the date of the decision passed on the review, or 4. (where the application next hereinafter mentioned has been made) the date of applying in accordance with law to the proper Court for execution, or to take some step in aid of execution of the decree or order, or 5. (where the notice next hereinafter mentioned has been issued) the date of issuing a notice under the Code of Civil Procedure, section 248, or 6. (where the application is to enforce any payment which the decree or order directs to be made at a specified date) the date so specified. <p><i>Explanation 1.</i>—Where the decree or order has been passed severally in favour of more persons than one, distinguishing portions of the subject-matter as payable or deliverable to each, the application mentioned in clause 4 of this Number</p> |

THE SECOND SCHEDULE—*continued.**Third Division: Applications—continued.*

| Description of application. | Period of limitation. | Time from which period begins to run. |
|--|-----------------------|--|
| | | <p>shall take effect in favour only of such of the said persons or their representatives as it may be made by. But when the decree or order has been passed jointly in favour of more persons than one, such application, if made by any one or more of them, or by his or their representatives, shall take effect in favour of them all.</p> <p>Where the decree or order has been passed, severally, against more persons than one, distinguishing portions of the subject-matter as payable or deliverable by each, the application shall take effect against only such of the said persons or their representatives as it may be made against. But where the decree or order has been passed jointly against more persons than one, the application, if made against any one or more of them, or against his or their representatives, shall take effect against them all.</p> <p><i>Explanation II.</i>—"Proper Court" means the Court whose duty it is (whether under section 226 or 227 of the Code of Civil Procedure or otherwise) to execute the decree or order.</p> |
| 180.—To enforce a judgment, decree, or order of any Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction, or an order of Her Majesty in Council. | Twelve years... | When a present right to enforce the judgment, decree, or order accrues to some person capable of releasing the right: |

THE SECOND SCHEDULE—concluded
Third Division Applications—concluded.

| Description of application. | Period of limitation. | Time from which period begins to run. |
|-----------------------------|-----------------------|--|
| | | <p>Provided that when the judgment, decree, or order has been revived, or some part of the principal money secured thereby, or some interest on such money has been paid, or some acknowledgment of the right thereto has been given in writing, signed by the person liable to pay such principal or interest, or his agent, to the person entitled there to or his agent, the twelve years shall be computed from the date of such revivor, payment, or acknowledgment, or the latest of such revivors, payments, or acknowledgments, as the case may be</p> |

And whereas it is also expedient to amend the Indian Limitation Act, 1877, in manner hereinafter appearing; It is hereby further enacted as follows:—

Amendment of Act XV.
of 1877, schedule

106. In the second schedule to the said Indian Limitation Act, 1877,—

for No. 161, the following shall be substituted, namely:—

"161.—For the issue of a certificate under section 258 of the same Code to the effect that the payment or adjustment thereon should not be recorded as certified,

Twenty days ...

When the payment or adjustment is made."

to No. 166, column one, the following words shall be added (namely): "on the ground that the decree-holder has purchased without the sanction of the Court";

to No. 171, column one, the words "or appellant" shall be added; and in column three, after the word "plaintiffs," the words "or appellant's" shall be inserted;

after No. 171, the following shall be inserted (namely):—

"171A.—Under section 366 of the same Code, by the defendant.

Sixty days ...

The date of the plaintiff's death.

"171B.—Under section 368 of the same Code, to have the representative of a deceased defendant made a defendant.

Ditto ...

The date of the defendant's death.

"171C.—Under section 371 of the same Code, for an order to set aside an order for abatement or dismissal.

Ditto ...

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and in No. 179, column three, paragraph 6, for the words "specified date) the date so specified" the words "certain date) such date" shall be substituted.

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